United States Circuit Court.

SOUTHERN DISTRICT OF NEW YORK.

The AMERICAN BELL TELEPHONE COMPANY,
AND OTHERS.

vs.

The PEOPLE'S TELEPHONE COMPANY,
AND OTHERS.

Defendant's Testimony in Sur-Rejoinder.

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IN THE

Circuit Court of the United States.

American Bell Telephone Company *et al.*

VS.

People's Telephone Company *et al.*

IN EQUITY.

Testimony in behalf of Respondents in Sur-Rejoinder.

HARRISBURG, *June* 4, 1884, 3.45, P. M.

Present, Mr. Storrow and Mr. Howson, for complainants, and Mr. Hill and Mr. Jacobs, for respondents.

By consent of counsel, Paul Charlton, Esq., a notary public of the city of Harrisburg, Pennsylvania, is appointed special examiner to take depositions of witnesses for respondents in sur-rejoinder at Harrisburg, in order that two examinations may be conducted at the same time, with the same effect as if taken before Mr. Ott, subject to all other objections.

FRED. M. OTT,
Examiner.

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FRED. M. OTT,
Examiner.

JOHN Y. FETRO, *being produced, affirmed, and examined, saith:*

Examined by Mr. Hill:

I am almost seventy years of age; I reside in Fairview township, York county, Pennsylvania; I had followed farming as long as I could; I don't follow anything now, I just potter around—live with my son-in-law.

Q. 1. How long have you lived on the farm where you now live with your son-in-law?

A. I moved there in 1869.

Q. 2. How far do you live from the mill known as Zinn's clover-mill?

A. Well, it may be something over a mile; I can't exactly tell the distance—something like that.

Q. 3. There is a foot-bridge there across the Yellowbreeches, near the mill, is there not?

[*Objected to as immaterial, and not competent at this stage of the case; this objection to apply to all questions relating to this topic.*]

A. Yes.

Q. 4. State whether or not you were ever present at or near that foot-bridge when it was carried away by high water?

A. I was.

Q. 5. Who, if anybody, were with you at the time?

A. Well, there was folks there at the time—well, if my mind serves me right, it was George Haring and Fred. Deckman.

Q. 6. Where did George Haring live at that time?

A. Well, between where I lived and the creek.

Q. 7. And where did Fred. Deckman live?

A. Well, he lived on further—on the same route to the creek.

Q. 7½. Do you mean that he lived nearer to the creek than Haring, by the route which you went?

[*Objected to as leading.*]

A. Yes, sir.

Q. 8. Did you and Haring and Deckman go down to the creek together or separately?

A. We went together.

Q. 9. What did you go down to the creek for that day?

A. I heard that the creek was high, and I went to see it.

Q. 10. What time of year was that?

A. Well, I can't exactly state the time that it was.

Q. 11. Can you tell whether it was summer or winter?

[*Objected to as leading and incompetent and asking for guess-work.*

A. Well, it was in the summer.

Q. 12. How near did you and Mr. Haring and Mr. Deckman go to the foot-bridge at Zinn's clover-mill that day?

A. Well, we were in and about the foot-bridge—just the distance I can't exactly tell—close enough to see it, anyhow.

Q. 13. Tell us anything that happened while you and Mr. Haring and Mr. Deckman were there looking at the foot-bridge or the high water that day.

A. Well, I seen the bridge started away; that is about all.

Q. 14. Tell us how the bridge was started away—what caused it, and how it happened.

A. Well, it went by the drift of a tree-top, you may say.

Q. 15. Where did the tree top come from?

A. Well, I am not able to say, any more than it came down the creek.

Q. 16. Did you see it come down the creek and strike the bridge?

[*Objected to as leading.*]

A. Yes; I seen it.

Q. 17. Did you notice what part of the tree-top struck the bridge?

A. A branch that stuck up out of the water.

Q. 18. What effect did the tree-top have on the bridge when it struck it?

A. It pulled it right down.

Q. 19. What became of the bridge after it was pulled down?

A. Why, it floated away.

Q. 20. And what became of the tree-top?

A. Why, it passed on.

Q. 21. Were you standing above, or below the bridge when it was carried away?

A. Above.

Q. 22. Do you remember anything of a flood in the Yellowbreeches that was sometimes called the ice-flood?

[*Objected to on the ground that there is no evidence that any particular flood ever was called the ice-flood.*]

A. No, sir; I don't remember—only just hearsay; but I didn't see nothing of it.

Q. 23. You have mentioned an occasion when you and Mr. Haring and Mr. Deckman were together at the foot-bridge when it was carried away by high water; was that the only time when you three gentlemen were there together, and the foot-bridge was carried away, or did such an event happen at any other time when you three were there together?

A. No, sir.

Q. 24. That doesn't answer the question—was that the only time, or was there another time?

A. That was the only time.

Q. 25. The Mr. Frederick Deckman whom you have mentioned—was he or not the same Frederick Deckman who is now in the adjoining room giving his deposition?

A. Yes, sir; he was the same.

Cross-examined, de bene esse, by Mr. Storrow:

Cross-Q. 26. Was it raining this day that you have been talking about?

A. I think not.

Cross-Q. 27. How long did you stay there watching the bridge that day?

A. Well, it was but a short time till the bridge went when we got there.

Cross-Q. 28. About how long did you stay there in all?

A. I can't exactly answer that question. I wasn't there long; I don't know how long in all.

Cross-Q. 29. Was there anybody else there looking on at the time?

A. I don't recollect of any only these two. There was other folks there, too, at the time, but I can't remember any of them.

Cross-Q. 30. Did you go and get Deckman and Haring to go with you that day?

A. Yes, sir.

Cross-Q. 31. Did you drive down there, or walk down?

A. I walked.

Cross-Q. 32. Whereabouts were you standing there?

A. Why, at the fording of the wagon bridge—or wagon road, I should say.

Cross-Q. 33. Were you three standing there together?

A. Why, I think we were, pretty much so.

Cross-Q. 34. Where did you find Deckman that day?

A. Why, he was on the route, and I can't just exactly say whether he was at home. We passed there, but I can't just exactly answer whether he went from home with us, or whether we got him some place on the route.

Cross-Q. 35. Where did you find Haring that day?

A. Right by his house.

Cross-Q. 36. Does the road from your house to the clover-mill foot-bridge pass by Haring's?

A. I went past there by a near route.

Cross-Q. 37. Is the shortest way to get from your house to the clover-mill the road that leads by Haring's?

A. No.

Cross-Q. 38. Who lives nearest the clover-mill, you or Haring?

A. Harring.

Cross-Q. 39. Did you start from your house that day to go down to the creek?

A. To the best of my knowledge I did.

Cross-Q. 40. Before dinner, or after dinner?

A. That is something I don't recollect.

Cross-Q. 41. Did you go to Haring's house on purpose to ask him to go down with you?

A. I didn't.

Cross-Q. 42. What did you go there for?

A. Why, I heard of high water, and I went to see it; and I went past Haring's.

Cross-Q. 43. In going from your house to the creek, by the shortest way, do you go past Haring's?

[*Objected to as assuming that the witness has stated that he went the shortest way, when he has explicitly stated that he did not.*

Objection objected to as instructing.]

A. Yes, sir.

Cross-Q. 44. Going along from your house to the creek, that way, how far is it after you pass Harings's before you get to Deckman's?

A. Well, it is not far.

Cross-Q. 45. How far?

A. No, sir; I don't remember—only just hearsay; but I didn't see nothing of it.

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A. That was the only time.

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Cross-Q. 27. How long did you stay there watching the bridge that day?

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Cross-Q. 28. About how long did you stay there in all?

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Cross-Q. 29. Was there anybody else there looking on at the time?

A. I don't recollect of any only these two. There was other folks there, too, at the time, but I can't remember any of them.

Cross-Q. 30. Did you go and get Deckman and Haring to go with you that day?

A. Yes, sir.

Cross-Q. 31. Did you drive down there, or walk down?

A. I walked.

Cross-Q. 32. Whereabouts were you standing there?

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Cross-Q. 36. Does the road from your house to the clover-mill foot-bridge pass by Haring's?

A. I went past there by a near route.

Cross-Q. 37. Is the shortest way to get from your house to the clover-mill the road that leads by Haring's?

A. No.

Cross-Q. 38. Who lives nearest the clover-mill, you or Haring?

A. Harring.

Cross-Q. 39. Did you start from your house that day to go down to the creek?

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A. That is something I don't recollect.

Cross-Q. 41. Did you go to Haring's house on purpose to ask him to go down with you?

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Objection objected to as instructing.]

A. Yes, sir.

Cross-Q. 44. Going along from your house to the creek, that way, how far is it after you pass Harings's before you get to Deckman's?

A. Well, it is not far.

Cross-Q. 45. How far?

A. It may be five or six hundred yards, for what I know.

Cross-Q. 46. Do you live in the same house now that you lived in then?

A. Yes, sir.

Cross-Q. 47. How long have you lived in that house?

A. From 1869, when I moved there.

Cross-Q. 48. Do you own any other house in York county?

A. Yes, sir.

Cross-Q. 49. Where is that other house?

[*Objected to as new matter and irrelevant.*]

A. Adjoining where I do live now—close by.

Cross-Q. 50. How long have you owned that other house?

[*Same objection.*]

A. From 1872, if my recollection serves me right.

Cross-Q. 51. Who has lived in that other house since you have owned it?

[*Same objection.*]

A. Samuel Shaffer, Brady, and Kintz, and Rudy.

Cross-Q. 52. Give the first names of those last three persons.

A. William Brady, Henry Kintz, and Rufus Rudy.

Cross-Q. 53. Who lives there now?

[*Same objection.*]

A. Rufus Rudy.

Cross-Q. 54. How long did Samuel Shaffer live there?

[*Same objection.*]

A. Two years.

Cross-Q. 55. Who lived there before him?

[*Same objection.*]

A. There was nobody lived there before him, under me.

Cross-Q. 56. Whom did you buy the house of?

[*Same objection.*]

A. Mother Otto.

Cross-Q. 57. What is her name?

[*Same objection.*]

A. Nancy, I think.

Cross-Q. 58. Is she any relation of yours?

[*Same objection.*]

A. No, sir.

Cross-Q. 59. Was she a married woman, or a widow at the time?

[*Same objection.*]

A. A widow.

Cross-Q. 60. I suppose you have heard this matter of a flood in the Yellowbreeches talked of during the last year, have you not?

A. Oh, I have.

Cross-Q. 61. Whom have you heard speak of it?

A. I can't answer that question.

Cross-Q. 62. Why can't you answer it?

A. Why, there has different ones been talking about it, and I don't know who in particular.

Cross-Q. 63. Can't you remember any one you have heard talking about it during the last year?

A. Oh, it is the common talk; and it is something that don't concern me; and I can't say.

Cross-Q. 64. Can't you remember the name of any one?

A. Not in particular.

Cross-Q. 65. I don't know what you mean by not in particular. Can't you name anybody whom you have heard speak about it during the last year?

A. Well, I have heard it talked; but it is something that I can't answer in particular—that there question.

Cross-Q. 66. Who has been to see you and talked with you about it?

A. I can't answer that question at the present, in the way that it comes.

Cross-Q. 67. Why can't you?

A. I wish to be correct, and I can't understand the question right.

Cross-Q. 68. Who has talked to you about the flood that you have testified about?

A. That is something that I can't answer at this time.

Cross-Q. 69. Why can't you answer?

A. Why, it is hearsay, and, having no interest in it, I paid no attention to it. That is one thing.

Cross-Q. 70. Is there any other reason?

JOHN Y. FETRO, *being produced, affirmed, and examined, saith:*

Examined by Mr. Hill:

I am almost seventy years of age; I reside in Fairview township, York county, Pennsylvania; I had followed farming as long as I could; I don't follow anything now, I just potter around—live with my son-in-law.

Q. 1. How long have you lived on the farm where you now live with your son-in-law?

A. I moved there in 1869.

Q. 2. How far do you live from the mill known as Zinn's clover-mill?

A. Well, it may be something over a mile; I can't exactly tell the distance—something like that.

Q. 3. There is a foot-bridge there across the Yellowbreeches, near the mill, is there not?

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A. Yes.

Q. 4. State whether or not you were ever present at or near that foot-bridge when it was carried away by high water?

A. I was.

Q. 5. Who, if anybody, were with you at the time?

A. Well, there was folks there at the time—well, if my mind serves me right, it was George Haring and Fred. Deckman.

Q. 6. Where did George Haring live at that time?

A. Well, between where I lived and the creek.

Q. 7. And where did Fred. Deckman live?

A. Well, he lived on further—on the same route to the creek.

Q. 7½. Do you mean that he lived nearer to the creek than Haring, by the route which you went?

[*Objected to as leading.*]

A. Yes, sir.

Q. 8. Did you and Haring and Deckman go down to the creek together or separately?

A. We went together.

Q. 9. What did you go down to the creek for that day?

A. I heard that the creek was high, and I went to see it.

Q. 10. What time of year was that?

A. Well, I can't exactly state the time that it was.

Q. 11. Can you tell whether it was summer or winter?

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A. Well, it was in the summer.

Q. 12. How near did you and Mr. Haring and Mr. Deckman go to the foot-bridge at Zinn's clover-mill that day?

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Q. 16. Did you see it come down the creek and strike the bridge?

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A. Above.

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A. Yes, sir.

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A. Right by his house.

Cross-Q. 36. Does the road from your house to the clover-mill foot-bridge pass by Haring's?

A. I went past there by a near route.

Cross-Q. 37. Is the shortest way to get from your house to the clover-mill the road that leads by Haring's?

A. No.

Cross-Q. 38. Who lives nearest the clover-mill, you or Haring?

A. Harring.

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Cross-Q. 40. Before dinner, or after dinner?

A. That is something I don't recollect.

Cross-Q. 41. Did you go to Haring's house on purpose to ask him to go down with you?

A. I didn't.

Cross-Q. 42. What did you go there for?

A. Why, I heard of high water, and I went to see it; and I went past Haring's.

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[*Objected to as assuming that the witness has stated that he went the shortest way, when he has explicitly stated that he did not.*

Objection objected to as instructing.]

A. Yes, sir.

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A. Well, it is not far.

Cross-Q. 45. How far?

A. It may be five or six hundred yards, for what I know.

Cross-Q. 46. Do you live in the same house now that you lived in then?

A. Yes, sir.

Cross-Q. 47. How long have you lived in that house?

A. From 1869, when I moved there.

Cross-Q. 48. Do you own any other house in York county?

A. Yes, sir.

Cross-Q. 49. Where is that other house?

[*Objected to as new matter and irrelevant.*]

A. Adjoining where I do live now—close by.

Cross-Q. 50. How long have you owned that other house?

[*Same objection.*]

A. From 1872, if my recollection serves me right.

Cross-Q. 51. Who has lived in that other house since you have owned it?

[*Same objection.*]

A. Samuel Shaffer, Brady, and Kintz, and Rudy.

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A. Two years.

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A. There was nobody lived there before him, under me.

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[*Same objection.*]

A. Mother Otto.

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[*Same objection.*]

A. Nancy, I think.

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A. A widow.

Cross-Q. 60. I suppose you have heard this matter of a flood in the Yellowbreeches talked of during the last year, have you not?

A. Oh, I have.

Cross-Q. 61. Whom have you heard speak of it?

A. I can't answer that question.

Cross-Q. 62. Why can't you answer it?

A. Why, there has different ones been talking about it, and I don't know who in particular.

Cross-Q. 63. Can't you remember any one you have heard talking about it during the last year?

A. Oh, it is the common talk; and it is something that don't concern me; and I can't say.

Cross-Q. 64. Can't you remember the name of any one?

A. Not in particular.

Cross-Q. 65. I don't know what you mean by not in particular. Can't you name anybody whom you have heard speak about it during the last year?

A. Well, I have heard it talked; but it is something that I can't answer in particular—that there question.

Cross-Q. 66. Who has been to see you and talked with you about it?

A. I can't answer that question at the present, in the way that it comes.

Cross-Q. 67. Why can't you?

A. I wish to be correct, and I can't understand the question right.

Cross-Q. 68. Who has talked to you about the flood that you have testified about?

A. That is something that I can't answer at this time.

Cross-Q. 69. Why can't you answer?

A. Why, it is hearsay, and, having no interest in it, I paid no attention to it. That is one thing.

Cross-Q. 70. Is there any other reason?

A. Not as I know of.

Cross-Q. 71. Who has talked with you, within the last three months, about any flood on the Yellowbreeches?

A. There has been different ones; it is like an old song, I take no heed to it.

Cross-Q. 72. Name some of those who have talked to you about it within the last three months.

A. Well, Mrs. Shaffer is one that has been talking about it, and George Haring.

Cross-Q. 73. Who else?

A. Edward Springer.

Cross-Q. 74. How old a fellow is Edward Springer?

A. Well, I can't tell his age.

Cross-Q. 75. About twenty, or about fifty?

A. He wasn't that old at the time of the flood.

Cross-Q. 76. Who else has talked with you about it this year?

A. Well, I don't know as anybody just in particular. I don't keep no memorandum of any of these people that talked to me about the flood.

Cross-Q. 77. Was it this year that Edward Springer talked to you about it?

A. Yes, it was only to-day that he was talking with me about it.

Cross-Q. 78. Where did he talk with you about it to-day?

A. Over here in the office.

Cross-Q. 79. Whose office?

A. Lawyer Jacobs' office.

Cross-Q. 80. Can't you name anybody else who has talked with you about it this year?

A. Oh, there was different ones was talking about the high water; that was the most there was of it—nothing in particular.

Cross-Q. 81. Who have you heard talking about the high water within the past year.

A. Well, I can't just answer all that I did hear.

Cross-Q. 82. Tell me anybody who has talked to you about the high water during the last year?

A. It is something that I can't answer in particular—who all did talk about it; there was different ones.

Cross-Q. 83. Name all those whom you remember.

A. That is something I can't do.

Cross-Q. 84. Don't you remember the name of anybody who has talked with you about the high water during the past year?

A. Why, I do; it is generally the talk of the neighborhood, you know.

Cross-Q. 85. Can't you tell me the name of anybody you have heard talk about it during the past year?

A. It is the common talk in the neighborhood. Anybody in the neighborhood, or every one, has more or less to say about it, and so I can't just pick out this one and that one that has been talking about it.

Cross-Q. 86. Do you remember whether anybody has been to ask you what you remembered of it?

A. Not anything in particular—any more than about the bridge going.

Cross-Q. 87. Who asked you what you remembered about that?

A. I can't just tell who.

Cross-Q. 88. Can't you name anybody who has asked you what you remembered about it?

A. No, not in particular.

Cross-Q. 89. How long ago did anybody first ask you what you knew about it?

A. That is something I can't answer.

Cross-Q. 90. About how long ago? Give me your best recollection.

A. Well, that is something that I ain't concerned in, and I can't tell how long.

Cross-Q. 91. You say that Mrs. Shaffer has spoken to you about the flood; is that Mrs. Ellen Shaffer, the widow of Samuel Shaffer?

A. Yes, sir.

Cross-Q. 92. Is she any relation of yours?

A. Yes, sir.

Cross-Q. 93. What relation?

A. I am her uncle.

Cross-Q. 94. What did she say to you about the flood or the bridge?

[*Objected to as calling for hearsay, and as new matter, and otherwise incompetent.*

A. About passing back and forward to her parents' during the time the bridge was away.

Cross-Q. 95. How long was the bridge away?

A. I can't answer that.

Cross-Q. 96. What is your best recollection as to how long it was away?

A. Well, from some time after harvest till in the fall some time; the bridge was rebuilt then.

Cross-Q. 97. Rebuilt in the fall of the same year?

A. I think so.

Cross-Q. 98. James Shaffer swore that it was not rebuilt until June of the next year; is he wrong or are you wrong?

[*Objected to as an improper mode of cross-examination, inasmuch as the witness, having just given his recollection upon the cross-examination, has nothing in the world to do with James Shaffer's testimony, and it is highly improper to attempt to influence his testimony thereby; and, secondly, because, as counsel for complainants well knows, James Shaffer has been shown to have made a mistake as to the matters about which he testified, and to have confounded different floods.*

Complainants' counsel reply that the testimony did tend to show that James Shaffer was mistaken in his deposition, but does not show that his mistakes can be explained in the manner suggested; but, as they think, the contrary.]

A. Well, I am under the impression that it was put up that fall that it went.

Adjourned until June 5, 1884, at 10, A. M.

JUNE 5th, 1884, 10, A. M.

Examination resumed.

Present, same counsel, and Mr. Church for the respondents.

Cross-examination of John Y. Fetro by Mr. Storrow continued:

Cross-Q. 99. What is the name of the son-in-law you live with?

A. Daniel Greenfield.

Cross-Q. 100. Tell me anything else you remember about floods in the Yellowbreeches whilst you have lived where you are now.

A. Well, there has been floods, but I can't recollect them well.

Cross-Q. 101. How many times do you remember that the Zinn bridge was carried away whilst you have lived where you are now?

A. I can't remember how often it was.

Examination taken, reduced to writing, and by the witness affirmed and subscribed to before me, this 5th day of June, 1884.

JOHN Y. FETRO.

FRED. M. OTT,
Examiner.

JUNE 4, 1884, 4, P. M.

Present, Mr. Howson for complainants and Mr. Jacobs for respondents.

FREDERICK DECKMAN, *being produced, sworn, and examined, saith:*

Examined by Mr. Jacobs:

Lives in Fairview township, York county; age about fifty-two years; day laborer; works about sixteen acres of land.

Q. 1. How far do you live from Zinn's clover-mill?

A. About half a mile—between a quarter and a half—between.

Q. 2. When did you move into the house in which you live now?

A. Eighteen years ago in the spring.

Q. 3. Were you ever present when the foot-bridge across the Yellowbreeches creek at Zinn's clover-mill was carried away?

[*Objected to by Mr. Howson as incompetent at this stage of the proceedings, this objection to apply to all questions on the same line of inquiry.*]

A. Yes; by a tree-top, I call it.

Q. 4. How did you come to be there?

A. Well, I was there, and George Haring and John Fetro.

Q. 5. Did you and Mr. Haring and Mr. Fetro come there together, or separately?

A. Yes; we come together.

Q. 6. Whereabouts were you and Mr. Haring and Mr. Fetro when the bridge was carried away by the tree-top?

A. We were just a little piece above, along the road by the fording, or about a hundred feet—fifty yards or so from the bridge.

Q. 7. On which side of the creek were you?

A. On the York county side.

Q. 8. Will you describe to us, as nearly as you can, how the bridge was carried away at that time?

A. Well, it was carried away with that tree-top.

Q. 9. How did that come to carry it away?

A. Well, that tree-top had a hook on, and went under it, and kind of ketched it and carried it away.

Q. 10. What was the condition of the water in the creek at that time—was it high or low?

A. It was high, of course, or else the top would not have come down.

Q. 11. Will you describe to us, as nearly as you can, what you have called a tree-top, which you say carried the bridge away?

A. Well, it was between a tree-top and a log—that's it.

Q. 12. What was the hook on it like? Describe that as nearly as you can.

A. Well, it was a hook between a foot and a half and two foot higher than the bridge, like.

Q. 13. Where was the tree-top or log when you first saw it?

A. Well, it was just a little above the dam; we seen it come down till it ketched the bridge.

Q. 14. What time of the year did this happen?

A. In August—towards the last of it.

Q. 15. Are you a brother of Samuel M. Deckman, who lives in Lower Allen township, Cumberland county, Pa.?

A. Yes.

Q. 16. How far does he live from you?

A. Well, it's about a mile and a half.

Q. 17. How near to the Yellowbreeches creek does he live?

A. Well, that's more than I can tell—about three hundred yards, or less.

Q. 18. Does he live above, or below Zinn's clover-mill?

A. Below.

Q. 19. Have you been accustomed to visit him occasionally ever since he has lived there?

[*Objected to as leading and immaterial.*]

A. Yes.

Q. 20. Do you remember of visiting his place soon after the time when you saw the clover-mill foot-bridge carried away, as you have described?

[*Objected to as leading.*]

A. No; I don't know that.

Q. 21. Can you tell us about how long it was after you saw the foot-bridge carried away that you visited your brother Samuel's place?

[*Objected to as incompetent and asking for guess-work.*]

A. Well, I guess it was about a month, as near as I can tell.

Q. 22. When did you meet Mr. Haring and Mr. Fetro on the day when you went with them to the creek and saw the foot-bridge carried away?

A. They came to my place; from there we went down.

Q. 23. Did they come to your place together, or separately?

A. They came together.

Q. 24. Did you ever, at any time after you saw the foot-bridge carried away, see anywhere along the creek timbers similar to those of which that foot-bridge was made?

[*Objected to as leading, and also because it does not appear that the witness is qualified to answer that question.*]

A. Yes; I seen some piers lying on the island at Hess's.

Q. 25. Was that island at Hess's above, or below the c over-mill foot-bridge?

A. Below; not above.

Q. 26. How long after the foot-bridge was carried away did you see those piers lying on the island at Hess's?

A. About a month.

Q. 27. Tell us, as nearly as you can, what those piers were like.

A. Well, they might have been about twelve foot long, as near as I could tell; I guess about that.

Cross-examined by Mr. Howson, de bene esse:

Cross-Q. 28. I understand you to say that Mr. Haring and Mr. Fetro called on you on the occasion which you have been testifying to, and that you three went down to the creek together; is that correct?

A. Yes.

Cross-Q. 29. What time of day was that?

A. Well, that's more than I can tell.

Cross-Q. 30. How long were you three down at the creek that day?

A. Well, I don't know; may be about an hour standing around there; may be a little longer.

Cross-Q. 31. Were you at one spot all the time?

A. Pretty much around on one spot around there.

Cross-Q. 32. How long before you went away from there was it that the tree-top came down?

A. The tree top came down before we went away.

Cross-Q. 33. How long before you went away from there was it that the tree-top came down?

A. Oh, well, about a half an hour, I guess.

Cross-Q. 34. Did all three of you leave the place together?

A. Yes.

Cross-Q. 35. Where did you go to from there?

A. Well, we went up to my place, and the rest they went I don't know where.

Cross-Q. 36. How far from the Yellowbreeches creek was Mr. Fetro living?

A. I guess about a mile and a half.

Cross-Q. 37. How far from the Yellowbreeches creek was Mr. Haring living?

A. Well, about three quarters of a mile.

Cross-Q. 38. They came to your place, did they, for the purpose of having you go down to the creek with them?

A. Well, that I couldn't tell—whether they just came a purpose—but they passed there.

Cross-Q. 39. You stated that you were a brother of Samuel M. Deckman; is that the same Samuel M. Deckman who testified for defendants in this case last winter?

A. Last winter? I guess he was over last winter.

Cross-Q. 40. When did you last see him to have any talk with him at all before to-day?

A. Not for a good while.

Cross-Q. 41. Can't you answer that more definitely as to when it was?

A. I couldn't tell when I talked to him—not for a good while, anyhow, before to-day.

Cross-Q. 42. Where did you last see him?

A. Well, I seen him at Hess's last, I guess.

Q. 43. When were you last at his place?

A. I wasn't at his place for a year.

Q. 44. Can you tell me just when it was—what month, or what time of year—that you were last at his place?

A. No; I couldn't tell that—in the winter sometime, though.

Q. 45. The winter of what year?

A. Well, this winter a year.

Q. 46. Who saw you about giving your testimony in this case?

A. Why, Shank.

Q. 47. When first?

A. Last Thursday evening.

Q. 48. Was any one with him? If so, who?

A. Nobody.

Q. 49. You have heard some talk lately about a flood in the Yellowbreeches, and carrying away of the bridge at Zinn's clover-mill?

A. Well, I have heard it, but I didn't take notice of it just to keep count of it.

Q. 50. About how long have you been hearing talk on that subject?

A. Well, that I couldn't tell—how long.

Q. 51. Off and on ever since last fall or winter, hasn't it been?

A. Well, it's a good while; I couldn't tell that.

Q. 52. Name some of the persons whom you have heard talking about the subject.

A. Well, I couldn't name them, 'cause I don't know, but I've heard them talking.

Q. 53. Your memory won't help you, eh, to the name of a single person whom you have heard talking lately on that subject?

A. No; I heard them talk, but I——

Cross-Q. 54. Are your visits to your brother generally at long intervals, such as a year or more apart?

A. Well, sometimes that I wasn't there for a year.

Cross-Q. 55. Does he ever visit you?

A. He didn't for that long.

Cross-Q. 56. You say he didn't for that long. How long?

A. Well, for this winter a year.

Cross-Q. 57. You distinctly remember, do you, that he did visit you this winter a year ago?

A. Yes.

Cross-Q. 58. Was it after, or before your last visit to him?

A. No; he was with me, because my woman was sick at the time.

Cross-Q. 59. Was it before or after your last visit to him?

A. It was before; he was up at my place last.

Cross-Q. 60. You say that you guess you saw your brother last at Hess's. Where was it that you saw him before that last?

[*Objected to as irrelevant and immaterial.*]

A. Yes; that I couldn't tell you.

Deposition taken, reduced to writing, and by the witness sworn to, and subscribed by making his mark, he being unable to write, before me, this 4th day of June, 1884.

PAUL CHARLTON,
Notary Public, Special Examiner.

his
FREDERICK × DECKMAN.
mark.

EDWARD P. SPRINGER, *being produced, affirmed, and examined, saith:*

Examined by Mr. Hill:

My age is twenty-four; I reside in Fairview township, York county, Penna.; I am a stone-mason.

Q. 1. How long have you lived in Fairview township, York county?

A. All my life, except two years that I was in the West.

Q. 2. If you remember what two years those were, please state.

A. The years of 1879 and 1880.

Q. 3. Do you know of a mill on the Yellowbreeches that generally goes under the name of Zinn's clover-mill?

A. Yes, sir.

Q. 4. Is there a foot-bridge across the Yellowbreeches near that mill?

[*Objected to as not competent evidence in sur-rejoinder; this objection to apply to all questions relating to this bridge.*]

A. Yes, sir.

Q. 5. Did you ever live anywhere in the neighborhood of that foot-bridge; if so, with whom did you live?

A. Yes, sir; I lived with Jacob K. Shell.

Q. 6. About how long did you live with Mr. Shell?

A. As near as I can tell, about ten years.

Q. 7. About what time was it that you ceased living with Mr. Shell?

A. In 1877.

Q. 8. In what county did Mr. Shell live, and about how far from the foot-bridge at Zinn's clover-mill?

A. In York county, and about a mile and a half by the road.

Q. 9. Did you ever own a boat, or any interest in a boat, on the Yellowbreeches?

A. Yes, sir.

Q. 10. How many boats did you ever own, or own an interest in?

A. Only one.

Q. 11. Referring to that one boat: did you own the whole of it or only a part interest in it?

A. Only a part interest.

Q. 12. Who, besides yourself, owned part interest in that boat at the time when you owned your part interest?

A. Mr. George W. Atticks.

Q. 13. Were there any other owners of the boat besides you and Mr. Atticks at that time?

A. No, sir.

Q. 14. Where was Mr. Atticks living at the time when you and he owned that boat in common?

A. He lived in Mr. Jacob K. Shell's house.

Q. 15. What became of your interest in the boat?

A. I sold it to Mr. Atticks.

Q. 16. What caused you to sell it to Mr. Atticks?

A. He moved away, and I sold my interest to him.

Q. 17. Did he take the boat away with him when he moved away?

A. Yes, sir.

Q. 18. While you and Mr. Atticks owned that boat together, where were you in the habit of tying up or keeping the boat when not using it?

A. At the foot of the "Grindstone hill."

Q. 19. Was that above, or below the Zinn's clover-mill bridge?

A. It was above.

Q. 20. About how far above was it?

A. I would suppose it was between a quarter and a half a mile.

Q. 21. About how long did you and Mr. Atticks own that boat together?

A. About nine months.

Q. 22. In what year was it that you and Mr. Atticks became the owners of that boat?

A. In the year 1873.

Q. 23. A witness named George W. Atticks testified in behalf of respondents in this case in November last, and among other things stated that his age was forty-two; his residence, Fairview township, York county, Penna.; his occupation farming, and that he lived in Jacob Shell's house from April, 1873, to April, 1874, and never lived in Mr. Shell's house except that one year, (see respondents' printed surrebutting record, pages 300, 301, *et seq.*); was that the same George W. Atticks who owned the boat with you, or another George W. Atticks?

A. It was the same George W. Atticks.

Q. 24. While you and Mr. George W. Atticks owned that boat together you state that you kept it at the foot of Grindstone hill; after you sold your interest to Mr. Atticks and he took the boat away, was the boat ever brought back, so far as you know, or not?

[*Objected to as immaterial.*]

A. No, sir; not to my knowledge.

Q. 25. State whether or not you knew of any flood occurring in the Yellowbreeches while you and Mr. Atticks owned that boat together.

[*Objected to as not in sur-rejoinder, this objection to apply to all questions relating to the subject.*]

A. Yes, sir; I did.

Q. 26. In what year was that flood, and about what time of year?

A. It was in the year of 1873—as near as I can tell, in the month of August.

Q. 27. Did you see that flood yourself, or not?

A. I did.

Q. 28. If you remember what caused you to go down to the Yellowbreeches at the time when you saw that flood, please state.

A. We went down to secure our boat.

Q. 29. Who went down with you to secure the boat?

A. Mr. George W. Atticks and Mr. Jacob K. Shell.

Q. 30. Did you secure the boat after you got down to the creek?

A. Yes, sir.

Q. 31. After securing the boat, where did you and Mr. Atticks and Mr. Shell go, if you remember?

A. Me and Mr. Shell went down the creek and I think Mr. Atticks went home.

Q. 32. How far down the creek did you and Mr. Shell go at that time?

A. Down as far as the foot-bridge at Zinn's clover-mill.

Q. 33. I understand that the carriage-road crosses the Yellowbreeches by a ford at Zinn's clover-mill; am I correctly informed?

A. Yes, sir; you are.

Q. 34. Is the foot-bridge above, or below the ford?

A. Below the ford.

Q. 35. About how far below?

A. I would suppose it was about twenty or twenty-five yards.

Q. 36. Did you go down to the foot-bridge, or only to the ford?

[*Objected to as leading.*]

A. We went to the foot-bridge.

Q. 37. How long did you remain about the foot-bridge, to the best of your recollection?

A. I would suppose, an hour or more.

Q. 38. If anything happened while you were down there by the foot-bridge, will you please tell us what happened?

A. The bridge was taken away.

Q. 39. What took the bridge away? Describe the occurrence.

A. A tree that came down the creek. The tree came down over the dam and struck the trestle-work on the York county side, and there was a limb or snag on the tree, that lifted the bridge off.

Q. 40. After the bridge was lifted off where did it go, and where did the tree go?

A. They floated on down the creek as far as I could see.

Q. 41. Was that tree that carried the bridge away a dead tree, or a tree with green leaves on it?

A. It had no green leaves on it, and I would suppose, from what I could see, that the tree was dead.

Q. 42. What is your recollection as to about the diameter of the trunk of the tree so far as you could see it projecting above the water?

A. I suppose it was about from eighteen inches to two foot in diameter.

Q. 43. Did the tree float level on the water, or was one end of it above and the other end under the water?

[*Objected to as leading.*]

A. No, sir; the trunk or butt-end of the tree floated deeper than the top.

Q. 44. Which end of the tree was the snag or limb on that caught against the bridge?

A. On the top-end of the tree.

Q. 45. Could you see whether there were any roots on the butt-end of the tree, or was it so far under water that you could not see?

[*Objected to as leading.*]

A. I saw no roots on the tree.

Q. 46. Could you see the tree clear to the butt-end or not?

A. No, sir; I could not.

Q. 47. Did you ever see that bridge carried away at any other time except the occasion that you have mentioned?

A. No, sir.

Q. 48. Do you know how long that bridge was down before it was repaired?

A. No, sir.

Q. 49. At the time when you saw that bridge carried away, did you personally know of any other bridges being carried away along the Yellowbreeches by the same flood?

A. No, sir, not more than by hearsay.

Q. 50. Was there any talk in the neighborhood at the time about other bridges along the Yellowbreeches being carried away by the same flood?

[*Objected to as inquiring for hearsay.*]

A. Yes, sir.

Q. 51. What was that talk?

[*Same objection.*]

A. The talk was that the bridge at the forge, the fulling-mill, and the one at Teahl's, or Etter & Shanklin's mill, were taken away.

[*The whole deposition objected to as not proper evidence in sur-rejoinder.*]

Cross-examined by Mr. Storrow, de bene esse:

Cross-Q. 52. Where do you live now—in what house?

A. I live in my own house.

Cross-Q. 53. Where is that?

A. In York county, about a mile and a quarter from New Cumberland.

Cross-Q. 54. On which road as you go from New Cumberland?

A. On the road from New Cumberland to Fishing Creek, York county.

Cross-Q. 55. How long have you lived there?

A. I have lived in my own house about three weeks.

Cross-Q. 56. Where did you live last before that?

A. I lived on the same road right close by it with Mr. George W. Springer.

Cross-Q. 57. Was he your father?

A No, sir.

Cross-Q. 58. Have you heard any talk within the last year about floods on the Yellowbreeches?

[*Objected to as immaterial.*]

A. Yes, sir.

Cross-Q. 59. Whom have you heard talk about it?

[*Same objection.*]

A. Well, I have heard different ones. I have heard Mr. Samuel Snell, Mr. George W. Atticks, Mr. George W. Springer, and others. I can't think of them just all.

Cross-Q. 60. Where did you and Mr. Atticks talk about it?

[*Same objection.*]

A. We talked about it one time in New Cumberland.

Cross-Q. 61. Where else?

[*Same objection.*]

A. I can't remember just where else.

Cross-Q. 62. Did he tell you that he had testified about the floods?

[*Same objection.*]

A. Yes, sir.

Cross-Q. 63. When was this talk with Atticks?

[*Same objection.*]

A. Last fall.

Cross-Q. 64. Whom else did you talk with last fall, or during the winter?

[*Same objection.*]

A. With those parties I have mentioned.

Cross-Q. 65. Can't you remember the name of anybody else?

[*Same objection.*]

A. I don't just remember of anybody else at present, except Samuel Deckman.

Cross-Q. 66. Where did you and Samuel Deckman talk about it

[*Same objection.*]

A. We talked about it going home from Harrisburg.

Cross-Q. 67. When was that?

[*Same objection.*]

A. Last Tuesday one week ago.

Cross-Q. 68. How did you come into Harrisburg that day

[*Same objection.*]

A. I walked in.

Cross-Q. 69. What business brought you here?

[*Same objection.*]

A. I came in to see Mr. Jacobs.

Cross-Q. 70. Who asked you to come in?

[*Same objection.*]

A. Mr. Shank; I don't know what his first name is.

Recess until 2, P. M.

Cross-Q. 71. When did Mr. Shank come to see you the first time?

[*Same objection.*]

A. Last Monday a week ago.

Cross-Q. 72. Who had talked to you before that about your recollection?

[*Same objection.*]

A. Mr. Shoop.

Cross-Q. 73. Do you know John Hamilton, of Fairview, York county?

[*Same objection.*]

A. Yes, sir.

Cross-Q. 74. What relation of yours is he?

[*Same objection.*]

A. I don't know as he would call it any; he is brother to my stepfather.

Examination taken, reduced to writing, and by the witness affirmed and subscribed to before me, this 5th day of June, 1884.

FRED. M. OTT,
Examiner.

EDWARD D. SPRINGER.

JACOB K. SHELL, *being produced, affirmed, and examined, saith:*

Examined by Mr. Hill:

My age is about sixty-two; I reside in Fairview township, York county, Penna.; I am a carpenter by trade.

Q. 1. How long have you resided where you now live?

A. I was born and raised there—stop; I am a little wrong there. In 1843 we moved over to Cumberland county, and in 1852 we moved back again, and I have lived there ever since.

Q. 2. How far do you live from the foot-bridge at Zinn's clover-mill?

A. A mile and a quarter, it was measured—from the Harrisburg road to the foot-bridge—when the road was laid out.

Q. 3. A young man named Edward D. Springer testified here this forenoon, and stated that he formerly lived with you; do you remember him?

A. Yes, I remember that he lived with me.

Q. 4. Do you remember anything about his having an interest in a boat on the Yellowbreeches while he lived with you?

A. Yes.

Q. 5. Tell us about that boat—who built it, and when?

A. I gave Ed Springer the lumber, and him and George Atticks built it together; in the spring of 1873, to the best of my knowledge.

Q. 6. Where was Mr. Atticks living at that time?

A. At my place, in my small house.

Q. 7. How long did Mr. Attick live on your place, and in what year did he move there and move away?

A. He moved there in the spring of 1873, and moved away in the spring of 1874—moved down and bought Doctor Hursh's farm.

Q. 8. While Springer and Atticks had their boat there on the Yellowbreeches, where were they in the habit of tying it up or keeping it when not in use?

A. Well, as far as I know, it was on the land of Frederick Deckman, at the upper end of the Grindstone hill, at the edge of the creek.

Q. 9. Did you ever go down there and help them tie it up or secure it?

A. Yes; the time that the creek was so high—the time that they say the watermelon flood was.

Q. 10. Who went down with you to secure the boat at that time?

A. Me and Ed Springer and George Atticks.

Q. 11. After you got down there and secured the boat, where did you go?

A. Down to the foot-bridge at Zinn's clover-mill.

Q. 12. Who of the party besides you went down to the foot-bridge?

A. Me and Ed Springer.

Q. 13. In going from the boat down to the foot-bridge, by what way did you go?

A. Along the Grindstone hill and the creek.

Q. 14. Was there a path along there, or did you have to clamber among the rocks and through the trees?

A. There was a path along there, but it was under water and we had to clamber along the best way we could. It is a very ugly hill; some places you can't hardly get along—you must crawl.

Q. 15. While you were down at the foot-bridge that day did anything happen? If so, what?

A. Yes; we saw the foot-bridge going away.

Q. 16. How happened the foot-bridge to go away?

A. Why, there was a tree came down top-foremost and took the foot-bridge.

Q. 17. Where did the bridge and tree go after the bridge fell?

A. Down the creek.

Q. 18. Did you see where they lodged, or did they keep on going until they got out of sight?

A. No, I didn't see them lodge; they got out of sight.

Q. 19. Where were you standing at the time when the bridge fell?

A. On the bank, above the bridge, or, rather, opposite, to the best of my knowledge, on the York county side.

Q. 20. About what was the size in diameter of that tree that took the bridge away, so far as you could judge?

A. Well, it looked to be in the neighborhood—I couldn't tell exactly, the top only was sticking up, and the butt end was under water—but it looked to be about two feet in diamter, or somewhere about there. I can't tell the size of a stick of timber exactly, floating along in that way—neither the size nor the length of it.

Q. 21. In what year, and about what time of year, was that flood?

A. In the year 1873; I can't give the date, but, if I mistake not, it was in August; it was the year that George Atticks lived there with me.

Q. 22. Do you remember what became of the boat which Atticks and Springer built together?

A. Why, Mr. Atticks took it down where he moved to; that is, down there on the Hursh farm, where he was nearer to the creek than he was at my place; he used it down there, and brought it back with him to where he moved this spring. and it is laying there in the yard now, all worn out.

Q. 23. Did you ever know of the foot-bridge there at Zinn's clover mill being carried away by an ice-flood?

A. Yes; but after 1873.

Q. 24. Do you remember about how long after it was?

A. Well, that I can't exactly tell; it was a year or so afterwards; maybe more or less; that I can't tell.

Q. 25. At the time when the tree carried the bridge away, in the summer of 1873, do you know how long the bridge was down before it was put up again?

A. No; that I can't state to you; it was put up, but how or when, that I don't know; it was a place that I didn't travel very often.

[*Whole deposition objected to as not competent evidence in rejoinder.*]

Cross-examined by Mr. Storrow, de bene esse:

Cross-Q. 26. Tell me what you know about that bridge being down any other time.

[*Objected to as new matter, not relevant to the examination-in-chief.*]

A. Well, it had been down a good while in the dead of the winter once that it blew down. My brother got caught between two logs that time, and came near being killed; that was a good while before, but I can't give day nor date.

Cross-Q. 27. Do you mean that it blew down in the dead of winter?

A. To the best of my recollection, it did. I know we didn't want to get in the water, and we got wagons; and when my brother got caught between the "T's," as you call them, we had to get into the water to get him out, and he was almost crushed. A lot of us neighbors put it up that time, and we got our dinner at Adam Zinn's.

Cross-Q. 28. You say "blown down;" I suppose you mean blown down by the wind.

A. Yes, sir; by the wind.

Cross-Q. 29. Was it ever blown down by the wind any other time?

A. Why, this spring it was blown down again—that is, the last of April.

Cross-Q. 30. Any other time?

A. Well, not to my recollection. It seems to me it has, but I wouldn't be positive about that; but this spring and the time that my brother got hurt——

Cross-Q. 31. Are you sure it was blown down by the wind this spring?

A. Yes; and John Lefever, the under-supervisor, as they call him,

and Jake Lefever, and John Greenfield, and Squire Smith put it up, and they wanted me to help, but I couldn't; I was making garden at the time.

Cross-Q. 32. How did your brother come to work on the bridge at the time you say he was hurt?

[*Objected to as not relevant to the examination-in-chief, and as utterly immaterial.*]

A. He undertook it, to the best of my knowledge, and he was a carpenter, too. There is always a head-man in the crowd, and he manages the others.

Cross-Q. 33. Was he the supervisor, too?

[*Same objection*]

A. No; he was not.

Cross-Q. 34. What was the name of that brother?

[*Same objection.*]

A. Andrew Shell.

Cross-Q 35. From York or Cumberland?

[*Same objection.*]

A. He lived in Lower Allen township, Cumberland county.

Cross-Q. 36. Is Mrs. Ellen Shaffer, widow of Samuel Shaffer, your niece?

[*Same objection.*]

A. Yes, sir.

Examination taken, reduced to writing, and by the witness affirmed and subscribed to before me this 5th day of June, 1884.

FRED. M. OTT,
Examiner.

JACOB K. SHELL.

JUNE 5, 1884, 10.30, A. M.

Resumed pursuant to adjournment.

Present, Mr. Howson for complainants, Mr. Jacobs for respondents.

GEORGE F. HARING, *being produced and affirmed, upon examination saith:*

Examined by Mr. Jacobs:

I live in Fairview township, York county, Pennsylvania; am fifty-six years old; am a farmer.

Q. 1. How far do you live from Zinn's clover-mill?

A. A mile.

Q. 2. How long have you lived there?

A. Sixteen years on the 19th day of last March that I moved there.

Q. 3. John Fetro, a witness who is now upon the stand in the next room, and Frederick Deckman, a witness who was examined yesterday, have testified that they and you were, on a certain occasion, on the bank of the Yellowbreeches creek opposite Zinn's clover-mill; do you remember of ever having been there with them?

[*Objected to as a leading and incompetent mode of examination, and as an inquiry incompetent for any purpose at this stage of the case*

Last objection to apply to all succeeding questions upon the same line of inquiry.]

A. Yes, sir.

Q. 4. Will you tell us how you came to be there?

A. Well, Fetro lives the furthest off from that place, and he came to my place, and him and I passed Deckman's, and that's the way we came to go together.

Q. 5. Do you mean that you and Mr. Fetro went together, or that all three of you went together to the creek?

A. Oh, yes; when we got to Deckman's the whole three of us was together.

Q. 6. About how long were you and Mr. Deckman and Mr. Fetro at the creek on that occasion?

A. Oh, its hard to tell. Perhaps an hour—an hour and a half—along there.

Q. 7. For what purpose did you go to the creek on that occasion?

A. For to see the high water.

Q. 8. Will you tell us what you saw whilst you were there?

A. Why, we saw a tree swimming down the creek.

Q. 9. Where was that tree when you first saw it?

A. Why, it came swimming down on the dam when we first saw it.

Q. 10. Did it pass over the dam?

[*Objected to as leading.*]

A. Yes, sir.

Q. 11. What became of it after it passed over the dam?

A. Passed on down the creek and broke the bridge.

Q. 12. Will you describe to us how it came to break the bridge?

A. There was a limb on it that stuck up, and that caught on the bridge.

Q. 13. Where were you standing at the time the limb caught on and broke the bridge?

A. On the shore.

Q. 14. On which side of the creek?

A. On the York county side.

Q. 15. Were you standing above, or below the bridge at the time?

A. Above.

Q. 16. Who, if anybody, was standing with you?

A. Fetro and Deckman.

Q. 17. What was the condition of the water in the creek at the time—was it high or low?

A. It was high.

Q. 18. What time of the year did this occur?

A. Well, about, perhaps, the last of August or beginning of September.

Q. 19. It has appeared in evidence that there was an ice-flood along the Yellowbreeches creek in the early part of 1875—did you know anything about that ice-flood?

[*Objected to as leading and incompetent at this stage of the case.*]

A. Well, I have very little recollection about that ice-flood.

Q. 20. Did you, or not, hear it talked about at the time when it occurred?

[*Also objected to as an inquiring for hearsay.*]

A. I heard talk about the ice-flood; yes, sir.

Q. 21. What part of the bridge was broken when the limb of the floating tree caught upon it?

A. The long timbers was broken.

Q. 22. What long timbers do you mean?

A. Well, some people call them the stringers.

Q. 23. What became of them after they were broken by the limb of the floating tree?

A. They floated down the stream.

Q. 24. What became of the tree?

A. It floated down also a piece.

Q. 25. There is a road which crosses the creek by a fording just above Zinn's clover-mill bridge, is there not?

A. Yes, sir.

Q. 26. How far from that road did you stand at the time when you saw the foot-bridge broken by the limb of the floating tree?

A. I am not right certain whether I stood in the road or in the path.

Q. 27. Was the time when you saw the foot-bridge broken, as you have described, before, or after the ice-flood, which you say you heard talked about?

[*Objected to as a leading and improper mode of inquiry, and as inquiring for mere guess-work, the question being peculiarly improper, because the witness' independent recollection of the time at which the alleged accident happened, as to which he has testified, has not been inquired into, while the alleged date of the ice-flood referred to has been given to him in a previous question.*]

A. Before, I think.

Cross-examination, de bene esse, by Mr. Howson:

Cross-Q 28. Referring to the ice-flood which has been mentioned to you in your direct examination, have you heard that ice-flood talked about at all within the last six months?

A. No, sir.

Cross-Q. 29. Have you heard any talk about floods upon the Yellow-breeches within that time?

A. I have heard talk about floods; yes, sir.

Cross-Q. 30. Talk by whom? Name some of the parties.

A. That's a little hard to do, too.

Cross-Q. 31. Hard to do because you have heard so many persons talking on the subject, or because your memory does not serve you as to the particular persons?

A. Well, for the want of memory.

Cross-Q. 32. Can't you think of a single person whom you have heard talk upon the subject within the last six months?

A. I can't call any to my memory.

Cross-Q. 33. Referring to the occasion when, as you say, you saw the bridge at Zinn's clover-mill broken, was the part of the bridge broken off floated down the stream in one piece, or in a number of pieces; and if the latter, how many pieces did you notice floating down the stream?

A. I noticed the two long timbers on the York county side most particularly.

Cross-Q. 34. How much of the bridge was left stading?

A. I can't tell, sir.

Cross-Q. 35. How long after that were you at Zinn's clover-mill again for the first time?

A. That I can't tell, sir.

Cross-Q. 36. How long did you stay looking at the pieces floating down stream?

A. About an hour and a half—along there.

Cross-Q. 37. Were you watching them from one place all that time, or did you go to different places?

A. One place all the time.

Cross-Q. 38. Where did you go to when you left there?

A. Home.

Cross-Q. 39. You say the floating tree went down stream; did it float away out of your sight?

A. Yes, sir.

Cross-Q. 40. How far above the bridge was this tree when you first saw it?

A. When I first saw it it was above the dam a piece—a short distance.

Cross-Q. 41. How far above the bridge?

A. Well, it might have been three hundred yards, perhaps.

Cross-Q. 42. Did you first notice it before, or after you reached the spot from which you saw it strike the bridge?

A. I can't rightly understand that, somehow.

Deposition taken, reduced to writing, and by the witness affirmed to and subscribed before me, the day and date above written.

PAUL CHARLTON,
Notary Public, Special Examiner.

GEORGE F. HARING.

Adjourned until 2, P. M., this day.

Mrs. ELIZA COLLINS, *being produced, sworn, and examined, saith:*

Examined by Mr. Hill:

I am the wife of Jacob Collins, of Milltown, Cumberland county, Penna.

Q. 1. How long ago were you married to Mr. Collins?

A. We were married in 1863.

Q. 2. Did you at one time live in York county, near the foot-bridge at Zinn's clover-mill?

A. Yes, sir.

Q. 3. How long did you live there, and in what years did you move there and move away?

A. We lived there ten years; we moved there in 1868, and moved away in 1878.

Q. 4. While you lived there, did you live in the same house all the time?

A. Yes, sir.

Q. 5. How far was that house from the foot-bridge at Zinn's clover-mill?

A. About three hundred yards.

Q. 6. Was the foot-bridge in sight from the house; and, if not, what prevented it from being seen from the house?

A. A grove of trees between the bridge and the house—that was what prevented us from seeing it from the house.

Q. 7. Could you see from the house the creek below the bridge?

A. Yes, sir; you could throw a stone from the house to the creek.

Q. 8. During the ten years that you lived there was that foot-bridge ever carried away?

A. It was carried away four times, and once blown over by a storm.

Q. 9. Do you remember when it was first carried away while you lived there?

A. Yes, sir; in 1871—in March—on a Sunday afternoon.

Q. 10. Do you remember when the second time was that it was carried away while you lived there?

A. In 1873—in August—by high water.

Q. 11. What enables you to fix the summer of 1873 as the time that bridge was carried away?

A. By the age of my youngest daughter.

Q. 12. When was she born?

A. June 22, 1873.

Q. 13. You have told us of the first and second times that the bridge was carried away while you lived there—when and how was it carried away the third time?

A. It was carried away in 1875 by the ice.

Q. 14. About what time in 1875 was it carried away by the ice?

A. Well, it was in the latter part of February or in March—I am not positive of the month, but the year I am.

Q. 15. Do you know how long the bridge was down after the ice-flood of 1875 before it was repaired?

A. It was in May or June that it was repaired; it was before hay-making.

Q. 16. Do you know what supervisor had charge of repairing it when it was put up after the ice-flood?

A. Mr. Daniel Weaver.

Q. 17. When the bridge went down by high water in August, 1873, as you have testified, do you know how long it was down before it was put up again?

A. It was put up the same fall—the same season.

Q. 18. Do you know who put it up at that time—in the fall of 1873?

A. Mr. Henry Bitner was supervisor, and Mr. Andy Shell done the work.

Q. 19. When the bridge was carried away in August, 1873, did you see it at the moment when it fell, or while it was going down stream, or not?

A. I saw it while it was going down stream past our house.

Q. 20. Describe what you saw going down stream.

A. I saw the log and part of the railing.

Q. 21. Do you remember just what it was that carried the bridge away at that time, or how it was done?

A. It was taken by a large tree coming down; I didn't see the tree taking the bridge, but I saw the tree floating down.

Q. 22. Was the tree, when you saw it, floating down with the bridge-timber, or separated from it?

A. There was part of the bridge-timber with the tree.

Q. 23. When you saw, in August, 1873, that the bridge had gone down stream, did you, at any time within a few days, go down to look at the place from which it had been carried away?

A. Just as soon as the creek went down, if I went to the spring, I could see where the bridge had been; which, of course, I did as soon as the creek went down—as the water fell.

Q. 24. Then, if I understand you, when the bridge was standing, although you could not see it from the house by reason of the intervening trees, yet you could see it from the spring where you were in the habit of getting water for the house?

[*Objected to as leading.*]

A. Yes, sir.

[*Whole deposition objected to as not competent in sur-rejoinder.*]

Cross-examined by Mr. Storrow, de bene esse:

Cross-Q. 25. Whose house did you live in in York county during the ten years?

A. Judge Henry G. Moser's.

Cross-Q. 26. Who lives in it now?

A. Mike Frysinger lived in it last year, but another man moved in this spring—Samuel Deckman's brother.

Cross-Q. 27. How near the creek is it?

A. I can hardly tell you how many steps—about two or three dozen steps, I suppose.

Cross-Q. 28. Up stream or down stream from the clover-mill?

A. Down stream—below the mill.

Cross-Q. 29. There is a ford not very far below the foot-bridge; was your house at that ford, or below it? I don't mean the ford at the foot-bridge, but one some rods below.

A. Our house was a little space below that. It was at the spring where we fetched the water from.

Cross-Q. 30. You say that Daniel Weaver, supervisor, put up the bridge in 1875. Who worked in it then besides Weaver?

A. I don't recollect.

Cross-Q. 31. How do you know Weaver put it up?

A. Because he passed our door when he went up to attend to his business.

Cross-Q. 32. How did he happen to pass your door if you lived on the York side?

A. Because he crossed the creek at Miller's mill, and it was a more direct road for him to pass our door than for him to go on the Cumberland side.

Cross-Q. 33. When was that foot-bridge carried away next after the spring of 1875?

A. I don't recollect in what year, but it was taken away by Lantz's dam breaking.

Cross-Q. 34. Where is Lantz's dam?

A. Perhaps eight or nine miles up the creek—eight miles, I suppose.

Cross-Q. 35. How many dams are there between that bridge and Lantz's dam?

A. I never followed the creek to count them.

Cross-Q. 36. How many do you know of?

[*Objected to as immaterial and irrelevant.*]

A. Zinn's and the fulling-mill is two, and this one is three. There is only three dams that I know—no, there is the forge dam is four.

Cross-Q. 37. What season of the year was it that this happened?

A. In harvest.

Cross-Q. 38. Do you know who put it up after that?

A. No, sir; I don't know.

Cross-Q. 39. Do you know who put it up in 1871?

A. No, sir; I don't recollect who put it up that year.

Cross-Q. 40. You have stated that it was down in 1871, 1873, 1875, and one other time; when was it down next?

A. Well, then it was, in October, blown over by a storm—one Sunday.

Cross-Q. 41. What year was that?

A. I can't say that positively.

Cross-Q. 42. Was it after the time when it was carried away by the bursting of Lantz's dam, that it was blown down?

A. Yes, sir; that was after.

Cross-Q. 43. What time in 1878 did you move away?

A. March 18th.

Cross-Q. 44. Where did you move to then?

A. Berks county.

Cross-Q. 45. How long have you lived in Milltown?

A. Five years the third of February—no; four years.

Cross-Q. 46. What house do you live in?

A. The first year we lived in Sam Hertzler's house. We bought a property of our own, and we have been living there for three years now.

Cross-Q. 47. What does your husband do?

A. Works days' work.

Cross-Q. 48. Whom for?

A. Mr. Jacob Renneker.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 5th day of June, 1884.

FRED. M. OTT,
Examiner.

ELIZA COLLINS.

Adjourned until June 6, 1884, at 10, A. M.

[BEFORE MR. CHARLTON.]

JUNE 5, 1884, 3, P. M.

Examination resumed.

GEORGE W. ATTICKS *being produced and affirmed, upon examination saith:*

Examined by Mr. Jacobs:

Q. 1. You are the same George W. Atticks, are you not, who testified in this case on behalf of respondents last November?

A. Yes, sir.

Q. 2. You then testified that you lived in a house owned by Jacob Shell from April, 1873, to April, 1874. If you have any book-account by which you can verify these dates, please produce it and point out to the Examiner the entries relating to your transactions with Mr. Shell, in order that he may copy them upon the record.

[*Objected to as incompetent at this stage of the case.*]

A. Yes, sir; I have a book account. The entries are as follows:

1873		Jacob Shell	Dr.	Cr. (p. 32)
April	22,	To making Ash hopper,	1.25	
May	6,	To 1 bu potatoes	.50	
	16,	To 1 axe at Kelker's	1.50	
	20,	To ¾ lb. tobacco	.48	
	28,	To 1 bu potatoes,	.50	
	30,	To ¾ lb. tobacco	.48	
June	5,	By cash for clothing (for ed.) at H. S. G.	2.00	
	18,	By cash (for Z. Ruby)	5.33	
	22,	To one door lock (at Kelkers)	.70	
	26,	To 9 lb. white lead		1.08
	"	To 1 qt. linseed oil		.35
	27,	To ¾ lb. tobacco	.48	
July	7,	To ¾ " "	.48	
	18,	To ¾ " "	.48	
Aug.	1,	To ¾ " "	.48	
	20,	To ¾ " "	.48	
Sept.	10,	To ¾ " "	.48	
	20,	To ¾ " "	.48	
	27,	To ¾ " "	.48	
Oct.	16,	To ¾ " "	.48	
	22,	To 14 lb. pork & ham		1.54
	24,	To ¾ " "	.48	
Nov.	13.	To 14 lbs. pork & Ham	1.54	
1874				
Feb.	12,	By cash (at holes sale	4.10	
		Carried to p. 45	28.18	2.97

[The following entries are from p. 45:]

"1874		Jacob R. Shell	Dr.	Cr.
Feb.	12,	Carried from page 32	23.18	2.97
1873				
Oct.	20,	Bill at—[illegible]	1.43	
July	15,	due bill H. H. Atticks	2.60	
"	"	to one year rent		30.00
			27.21	32.97
1874				
March	13,	By cash	5.76	
			32.97	32.97

March 13, settled in full

(Signed)

G. W. Atticks

Jacob K. Shell"

Q. 3. Where were you living at the time the transactions to which those entries refer took place?

[*Objection continued.*]

A. In the house of Jacob Shell.

Q. 4. Whereabouts was that house?

A. Fairview township, York county, Pennsylvania.

Q. 5. How far from the Yellowbreeches creek?

A. About one fourth of a mile.

Q. 6. In whose handwriting are the entries which you have pointed out to the Examiner?

A. In my own.

Q. 7. In whose handwriting are the signatures at the end of that account and settlement?

A. My own and Jacob Shell's.

Q. 8. When were the entries, which you have pointed out, made?

A. Well, they were all made at the time of the date, with the exception of "due bill H. H. Atticks—2.60;" "to one year's rent $30, July 15 1873"—them entries were not made there at that time, but were made March 13, on the day of settlement—March 13, 1874.

[*Complainants object to the book-entries and all testimony regarding them, the book itself not being offered in evidence.*]

Q. 9. How long before the date of the first entry did you move into Mr. Shell's house?

A. Well, I moved there the first day of April, or within two days of the first day of April, if not then; my impression is that it was the first, but it may vary that much—within two days of the first day of April.

Q. 10. How long after the date of the settlement between you and Mr. Shell did you remain in his house?

A. We moved away on the first day of April, or within a day or two of that—my impression is that it was the first day of April.

Q. 11. Where did you move to?

A. To a property near New Cumberland I bought of Dr. Hursh.

Q. 12. If you have the deed for that property with you, will you please produce it, in order that the Examiner may note the date of it upon the record?

[***Objected to on the same ground as question 2; and objection is here made, to apply to the entire deposition, to the further examination of this witness at this time upon any part of the subjects or matters referred to in his deposition taken and closed during the taking of defendants' testimony in sur-rebuttal in this case.***]

A. Yes, sir, I have the deed; this is it.

[*Deed produced, being dated March 30, 1874, from George R. Hursh and Sarah A., his wife, to George W. Atticks, for a tract of land in Fairview township, York county, Pennsylvania, acknowledged before M. S. Bower, Esquire, on the 30th day of March, 1874; recorded April 7, 1874, in the office for recording of deeds in and for York county, in book 5 Q., p. 588.*]

Q. 13. Did you move upon that property before, or after the date of the deed?

A. I moved there about the same date; my impression is, on the first of April following.

Q. 14. Are you acquainted with Edward D. Springer, who has testified as a witness in this case?

A. Yes, sir.

Q. 15. Did you ever have anything in partnership with him?

A. Yes, sir.

Q. 16. What was it?

A. We had a boat in partnership.

Q. 17. Where were you living and where was he living at the time you had that boat in partnership?

A. I was living in the house of Jacob Shell's, and he was living with Jacob Shell, in the same yard; Jacob Shell lived in his mansion house, and I lived in his tenement house.

Q. 18. Did you ever live in any house belonging to Jacob Shell except, as you have before testified, from April, 1873, to April, 1874?

A. No, sir.

Q. 19. What became of that boat when you moved away from Shell's house about April 1, 1874?

A. I took it with me down the creek to where I moved.

Q. 20. Did Edward D. Springer still retain his interest in the boat after you took it away or not?

A. I bought his one-half interest when I moved away, and moved the boat.

Q. 21. Have you ever, since that time, had any boat in partnership with him?

A. No, sir.

Q. 22. Where did you keep that boat whilst you lived in Mr. Shell's house?

A. At the foot of Grindstone hill, on the Yellowbreeches creek, near the line between George Lefever and Frederick Deckman.

Q. 23. Where was it at the time of the watermelon flood, concerning which you testified in your former deposition?

[*Objected to as incompetent at this stage of the case, this objection to apply to any and all questions concerning the so-called watermelon flood, or anything alleged to have occurred therein.*]

A. At the same place.

Q. 24. Did you see it there at that time?

[*Objected to as leading.*]

A. Yes, sir.

Q. 25. How did you come to see it there at that time?

A. I knew the creek was high, and I went to look after it—to take it out of the water.

Q. 26. Did you take it out?

A. Yes, sir.

Q. 27. Were you there alone, or was some one else with you?

A. Edward D. Springer was with me, and my impression is that Jacob K. Shell was along.

Q. 28. After you had taken the boat out of the water, did you remain at the creek?

A. No, sir.

Q. 29. Where did you go?

A. I went home.

Q. 30. Did Springer and Shell go with you home?

A. Not to my recollection.

Q. 31. How did you and Springer happen to have the boat in partnership?

[*Objected to as immaterial.*]

A. That's a question I don't hardly know as I understand.

Q. 32. Who built the boat?

[*Objected to as immaterial.*]

A. I did.

Q. 33. Who furnished the lumber?

[*Objected to as immaterial.*]

A. I paid for one half of it, and Jacob Shell paid for the other half for Edward Springer.

Cross-examined, de bene esse, by Mr. Howson:

Cross-Q. 34. How far from Yellowbreeches creek is the house of Dr. Hursh, to which you say you moved in 1874?

A. Between one fourth and one eighth of a mile.

Cross-Q. 35. How far from Zinn's clover-mill?

A. Well, it's between three and four miles.

Cross-Q. 36. Down stream, or up from the Shell house which you occupied?

A. Down stream.

Cross-Q. 37. What sort of weather was it when you and Mr. Springer went down to the creek to take your boat out of the water, as you have stated?

A. It was generally wet weather—a time of floods on the Yellowbreeches creek.

Cross-Q. 38. You mean to say, as a matter of fact, that it was wet weather when you went down to take your boat out of the water? I am asking for fact, not for argument.

A. Yes, sir; it was wet weather. I do not know if it was raining, exactly, at the time when we went down there for that purpose.

Cross-Q. 39. Are you prepared to state, as a matter of positive recollection, whether it was raining during that day or not?

A. I am not; yet my opinion is that it rained some during that day.

[*All after the words "I am not" objected to as volunteered and incompetent.*]

Cross-Q. 40. What time of day was it when you went down to take the boat out of water?

A. I am not prepared to give the time of day; my impression is it was in the forenoon some time.

Cross-Q. 41. How soon after that were you down at the creek again?

A. My impression is I was down the next day; in fact, I was at the creek nearly every day during that time.

Cross-Q. 42. Where did you put your boat when you took it out of the water?

A. We put it up on the bank.

Cross-Q. 43. How far up the bank, and on whose land?

A. About twenty feet. I think, on Mr. Deckman's land; I am not positive of the line just there.

Cross-Q. 44. How long were you and Mr. Springer and Mr. Shell down at the creek on that occasion?

A. Don't know as I can give any definite time; we were there probably fifteen, twenty, twenty-five minutes.

Cross-Q. 45. Are all the entries in this account-book, which you have produced, in your own handwriting?

A. Yes, sir; I don't think any one else wrote in it. It has been my account-book for—ever since that book had been used for that purpose I have used it.

Cross-Q. 46. Are the entries under the names Elma Kintz and Leah Dietz, on pages 60 and 61, all in your handwriting?

A. Yes, sir; they are.

[*The Examiner is requested to retain the account-book in his possession so that it may be produced at the hearing, if called for.*

Witness states that the book is still used for current and unsettled accounts, and that he is, therefore, unwilling that it shall go out of his custody.

Complainants renew their request, and also renew their objection to any and all testimony based, or assumed to be based, upon the book in question unless either the book be offered in evidence, or it be retained in the Examiner's custody for production at the hearing.]

Cross-Q. 47. I notice that the several entries which you have given to the Examiner as constituting the Jacob Shell account commence with the date April 22, 1873, and continue to the date February 12, 1874, which entry is at the foot of page 32; that the next succeeding account, commencing at the top of page 33, under the name Henry Starr, commences with the date June 19, 1871; and that the next account, on the same page 33, under the name C. J. Carr, appears to refer entirely to dates in the year 1876; you find these statements to be correct, don't you?

A. Yes, sir; I find them to be correct; but I'll explain them, that's all: You find on the top of page 32 Jacob Shell's name and entries in the year 1871; you find on page 33 Henry Starr's name and entries in the year 1871, up to February 22, 1872; then his account with me closed and was settled, and I had no more dealings with Henry Starr. C. J. Carr's name appears on the same page, with account of meals in the year 1876, from October 30 to November 5. The reason why I put

Carr's account there was because I knew I would have but few dealings with him, and my account with Starr was closed.

[*Defendants' counsel requests Examiner at this point to copy upon the record all the entries upon page* 32.

The Examiner copies page 32 *as follows:*

"1871 Jacob Shell,	Dr	Cr
May 23, To 17 lbs. Veal		2.40
August 26, To water melons	.60	
28, To 8½ lbs. mutton at 11cts. lb		.93
Sept. 18, To 26 lb. Beef at 10 cts. per lb	2.60	
Oct. 3, To 11¼ lbs. mutton at 11cts. per lb		1.24
By Cash	1.37	
settled	4.57	4.57
1873	Dr	Cr
April 22, To making ash hopper	1.25	
May 6, To 1 bu potatoes	.50	
16, To 1 axe at Kelkers	1.50	
20, To ¾ lb. tobacco	.48	
28, To 1 bu potatoes	.50	
30, To ¾ lb. tobacco	.48	
June 5, By cash for clothing for (ed) at H. S. G.	2.00	
18, By cash (for Z. Rudy)	5.33	
22, To one door lock (at Kelkers)	.70	
20, To 9 lb. white lead		1.08
" To 1 qt linseed oil		.35
27, To ¾ lb tobacco	.48	
July 7, To ¾ " "	.48	
18, To ¾ " "	.48	
Aug. 1, To ¾ " "	.48	
20, To ¾ " "	.48	
Sept. 10, To ¾ " "	.48	
20, To ¾ " "	.48	
27, To ¾ " "	.48	
Oct. 16, To ¾ " "	.48	
22, To 14 lbs. pork & ham		1.54
25, To ¾ " " "	.48	
Nov. 13, To 14 lbs pork & ham	1.54	
1874		
Feb. 12, By cash at holes sale	4.10	
Carried to page 45	23.18	2.97"

Cross-Q. 48. And the Shell account is continued on page 45, from and after February 12, 1874, and succeeds two accounts appearing upon page 44, of which one refers entirely to dates in 1875 and 1876, and the other entirely to dates in 1876; that is correct, is it not?

A. Yes, sir; that is correct, but I can explain that. Page 44 was already occupied with an account of Rev. S. E. Herring, and was not closed until April 1, 1874. I think that covers it.

[*Defendants' counsel requests the Examiner, at this point, to copy upon the record all of the three accounts appearing upon page* 44.

Complainants object to this interjection into cross-examination of matter called for by defendants' counsel.

The Examiner copies said accounts as follows:

"1873. Rev. S. E. Herring. Dr. Cr.

Dec. 2,	Carried from page 42	50.78	67.39
1874			
April 1th	By cash	17.45	.84
		68.23	68.23

1875	Melisa Hamilton.	
Sept. 28,	Began work at $1.00 per week	
Oct. 2,	To pear shoes at Harrisburg,	1.75
Nov. 6,	By cash,	.50
13,	By cash,	2.00
Dec. 4,	Quit work	
10,	By cash,	1.00
27,	By cash,	4.41
March 30,	Settled in full	

1876.	Elsie Kintz.	Dr.	Cr.
April, 4,	Began work for 6 50 per month		
21,	To pear boots at Boughmans	3.75	
May 2,	To straw hat " "	.20	
June 24,	By cash,	.25	
July 18,	To pear shoes at Boughmans	1.90	
22,	By cash,	5.00	
	(16 to 23 sick missed work)		
August 11,	By cash,	1.00	
12,	" absent,	10.00	
19,	By cash,	.25	
26,	By cash,	.25	
Sept. 30,	By cash,	.25	
Oct. 14,	By cash,	.25	
26,	By cash,	5.00	
"	To per boots at Boughmans	.25	
Nov. 25,	Quit work—(by cash	.40	49.75
		28.75	
29,	By cash,	5.00	
	Carried to page 50,	33.75"]	

Cross-Q. 49. When was the entry made on page 45 in the Shell account, dated October 20, 1873, and appearing after an entry of February 12, 1874?

A. The entry of October 20, 1873, also the entry of July 15, 1873, were either made on February 12, the day of carrying the account from page 32, or on March 13, 1874, the day of settlement. They were all in the shape of receipts, and I entered them in the book for the purpose of squaring the accounts when we settled.

Cross-Q. 50. Are all the particular entries referred to in your last answer in your own handwriting?

A. Yes, sir. I think there is not a word in that book not written by me, except names signed in settlement.

Cross-Q. 51. It is a fact, is it not, that throughout this book of yours, in different places, accounts are scattered referring to dates considerably later than other accounts which come after them in the book?

A. Yes, sir. I have had a habit of making use of vacant spaces where I knew accounts were settled.

Re-direct examination by Mr Jacobs:

Q. Q. 52. In cross-answer 42 you have said that when you took your boat out of the water you put it up on the bank. Did you or not secure it there in any manner?

A. I do not know as I had refastened it in any way, for I knew it would only remain there till the flood subsided.

Deposition taken, reduced to writing by and signed before me, this 5th day of June, A. D. 1884.

PAUL CHARLTON,
Notary Public, Special Examiner.

GEORGE W. ATTICKS.

Adjourned to the 6th of June, 1884, at 10, A. M.

[BEFORE MR. OTT.]

JUNE 6, 1884, 10, A. M.

Examination resumed.

Present, same counsel, except Mr. Church.

ADELINE MOSER, *being produced, affirmed, and examined, saith:*

Examined by Mr. Hill:

I am the wife of Jacob Moser, of Douglass township, Berks county, Penna.

Q. 1. Did you formerly live in Fairview township, York county, Penna.?

A. Yes, sir.

Q. 2. When did you move away from Fairview township to Berks county?

A. In 1878—six years ago.

Q. 3. When were you married to Mr. Moser?

A. Eighteen years ago last December.

Q. 4. How long did you live in Fairview township before you moved away?

A. Twelve years.

Q. 5. What was your husband's business while you lived in Fairview township?

A. Farming.

Q. 6. While you and your husband lived together in Fairview township, did you live on the same farm all the time?

A. Yes, sir.

Q. 7. Whose farm was that?

A. Henry G. Moser's.

Q. 8. How near was your house to the foot-bridge at Zinn's clover-mill?

A. Oh, that I won't just answer, because I might not be right—about a quarter of a mile; it might have been farther, but it wasn't no half a mile. Call it about a quarter of a mile.

Q. 9. Was it up or down the stream from the foot-bridge?

A. Our house was from the foot-bridge down the stream.

Q. 10. How far was your house from the creek?

A. Why, it was about half as far from our house to the creek as it was from our house to the bridge.

Q. 11. Was there a tenant-house on the farm besides the house that you lived in?

A. Yes, sir.

Q. 12. Was the tenant-house nearer to the creek than the house that you lived in?

A. Yes, sir.

Q. 13. What family occupied the house the greater part of the time while you lived there?

A. Jacob Collins.

Q. 14. Do you know when the Collins family moved away from there?

A. Six years ago—the same time we moved away.

Q. 15. While you lived there on the Moser place, did you have a girl named Clara Eppley working for you at any time?

A. Yes, sir.

Q. 16. Do you know when she first came to work for you?

A. On the fourteenth day of April, 1873.

Q. 17. Do you remember anything that happened about the time she came to live with you?

A. Yes, sir; our daughter Hetty was born on that day.

Q. 18. How long did Clara Eppley live with you?

A. She lived with us till the next spring; in May she left.

Q. 19. Did she come back and live with you again a year or two afterwards?

A. Yes, sir.

Q. 20. What kind of work did she do while she lived with you—household work or—

[*Objected to as leading.*]

A. Yes, sir.

Q. 21. Do you remember whether she did any work in the fields?

[*Same objection.*]

A. Yes, sir, sometimes.

Q. 22. While you lived there, did you have occasion to cross the creek at the foot-bridge once in a while, or not?

[*Same objection.*]

A. Yes, sir.

Q. 23. What errand took you across the creek there mostly?

A. To visit a neighbor's, Mr. Zinn's, who lived on the other side.

Q. 24. If I understand you correctly, Clara Eppley lived with you during the summer of 1873, and that was the first summer that she lived with you?

[*Objected to as leading.*]

A. Yes, sir.

Q. 25. While you lived there on the Moser farm, did your husband ever raise any corn on the bottom-land down by the creek?

A. We raised corn by the creek.

Q. 26. When raising corn down by the creek, was the corn ever damaged any by high water in the creek or not?

A. Yes, sir; it was damaged in 1873.

Q. 27. Do you remember about how large the corn was, and what was the condition of its growth at that time?

A. No, sir; I remember not.

Q. 28. Do you remember whether that damage to the corn occurred after, or before the wheat harvest of that year?

A. No, sir; I remember not.

Q. 29. When the water came up and damaged the corn that year, was the creek up pretty high, or not?

A. It was high.

Q. 30. Do you remember whether that high water had any effect on the foot-bridge at the clover-mill, or not?

Objected to as immaterial and not proper evidence in sur-rejoinder, this objection to apply to all questions relating to the high water or the bridge.]

A. Yes, sir.

Q. 31. What effect did it have on the foot-bridge?

A. Why, it brought a tree or a log, and knocked the foot-bridge away—part of it.

Q. 32. Do you remember an ice-flood carrying that foot-bridge away while you lived there?

A. Yes, sir.

Q. 33. Was that ice-flood the same flood in which the tree came down and knocked the bridge away, or another and different flood?

A. It was a different flood.

Q. 34. Has Clara Eppley been married since she lived with you; and if so, what is her present name?

A. Yes, sir; her present name is Boyer.

Q. 35. Where does she live, and what is her husband's name?

A. Berks county; her husband's name is J. E. Boyer.

Q. 36. About how far do you now live from Harrisburg?

A. About seventy miles.

[*Whole deposition objected to as relating to matters which are immaterial, and because it is not competent in sur-rejoinder.*]

Cross-examined, de bene esse, by Mr. Storrow:

Cross-Q. 37. When did you come to Harrisburg to testify?

A. Last evening, at eight o'clock.

Cross-Q. 38. Who asked you to come up here?

A. Mr. Drawbaugh; I don't know his first name.

[*Respondents' counsel states that it was Henry F. Drawbaugh.*]

Cross-Q. 39. Who had been down to see you before that?

A. The same man.

Cross-Q. 40. Tell me anything else that you know about high water in the Yellowbreeches while you lived on the Moser farm.

[*Objected to as vague, also as immaterial.*]

A. Why, the flood took our fence away along our corn-field, and the neighbors' cattle got in and destroyed some corn.

Cross-Q. 41. When was that?

A. In 1873.

Cross-Q. 42. Tell me anything that you remember about any floods in any other year.

A. No, sir; I remember the one ice-flood; that is all I remember.

Cross-Q. 43. Was the clover-mill foot-bridge ever down at any other time while you lived there? If so, tell me everything you remember about it.

[*Objected to as irrelevant.*]

A. Those are only the two floods that I remember that the bridge was taken.

Cross-Q. 44. What makes you think that the bridge was taken away by a tree?

A. In 1873? I was told so by the nearest neighbors.

Cross-Q. 45. When you moved away from there, who took your house?

A. John Deckman.

Cross-Q. 46. What was your name before you were married?

A. Adeline Boyer.

Cross-Q. 47. Mrs. Jacob Collins is a sister of John Hamilton, is she not?

[*Objected to as immaterial, irrelevant, new matter not inquired of in the examination-in-chief, and apparently calling for hearsay.*]

A. Yes, sir.

Cross-Q. 48. In your direct examination you were asked, in questions 13 and 14, about the Collins family. Do you know who took their house when they moved away?

[*Same objection.*]

A. I know the man, but I forget his name.

Cross-Q. 49. Was it Mike Frysinger?

[*Same objection.*]

A. No, sir.

Cross-Q. 50. Did anybody, except you and the Jacob Collins' family, live on the Henry G. Moser farm?

A. No, sir.

Re-direct by Mr. Hill:

Q. Q. 51. In cross-question 44 you were asked: "What makes you think that the bridge was taken away by a tree?" and you replied: "In 1873? I was told so by the nearest neighbors." When were you told so by the nearest neighbors?

[*Objected to as calling for hearsay.*

Respondents' counsel calls attention to the fact that complainants' counsel brought out the hearsay, and respondents' counsel now only wishes to fix the date of the hearsay.]

A. During the flood.

Examination taken, reduced to writing, and by the witness affirmed and subscribed to before me, this 6th day of June, A. D. 1884.

FRED. M. OTT,
Examiner.

ADELINE MOSER.

JACOB W. MOSER, *being produced, affirmed, and examined, saith:*

Examined by Mr Hill:

My age is forty-three; I reside in Douglass township, Berks county, Pa.; I am a farmer.

Q. 1. Are you the husband of Mrs. Adeline Moser, who has just testified in this case?

A. Yes, sir.

Q. 2. You formerly lived on the Henry G. Moser farm on the Yellowbreeches creek, near Zinn's clover-mill, did you not?

A. Yes, sir.

Q. 3. While you lived there, do you remember of any flood occurring in the Yellowbreeches in the summer season?

A. Yes, sir.

Q. 4. In what year was there such a flood?

A. In 1873 there was one.

Q. 5. About what time in 1873?

A. Well, to the best of my recollection, it must have been in August—some time in August.

Q. 6. If you have any particular reason for fixing the time as in August, please state what those reasons are.

A. Why, we had corn in the field adjoining the creek, and the water had went over it at that time.

Q. 7. At what stage of growth was that corn when the water went over it at that time?

A. It was in roasting-ear time.

Q. 8. If you had any hired girl living with you that summer, will you please state what her name was?

A. Clara Eppley.

Q. 9. Did she have anything to do with that corn or corn-field while she lived there?

[*Objected to as leading.*]

A. Yes, sir; she helped to dress the corn occasionally.

Q. 10. How long had she been living with you when that flood took place?

A. She came to live with us that same spring, when the flood was in the fall—or in August, rather.

Q. 11. The flood occurred, then, during the first summer that she lived with you, did it?

A. Yes, sir.

Q. 12. Did that flood do any damage to the foot-bridge at Zinn's clover-mill or not?

A. Yes, sir.

Q. 13. What damage did it do to it, and how?

A. It swept it away by a tree or a log.

Q. 14. While you lived there, did you know anything about an ice-flood carrying the same bridge away?

A. Yes, sir; it was taken away, I think, about two years afterwards.

Q. 15. Do you mean that it was taken away by an ice-flood about two years after it was taken away by the flood of August, 1873?

[*Objected to as leading.*]

A. Yes, sir.

Q. 16. Did you keep any book-account with Clara Eppley during any part of the time while she lived with you?

A. I did, the first year that she lived with us.

Q. 17. Why didn't you continue to keep a book-account with her up to the time when she finally left?

A. I got kind of lazy about it, was the reason.

Q. 18. If you have that book here, will you please produce it and point out Clara Epply's account in it?

A. Yes, sir; here it is. [Witness produces account-book and points to account, page 42.] I don't know what that is. [Referring to an item of April 1, 1874, on page 43.] That I don't think belongs to it.

Q. 19. In whose handwriting is this account of Clara Eppley's on page 42?

A. That is my writing.

Q. 20. Did you make the entries in this Clara Eppley's account at the time of their dates?

A. Yes, sir.

Respondents' counsel requests the Examiner to copy upon the record at this point the heading and first item of said account. The Examiner copies them as follows:

" Clara Eppley Dr.
1873
April 14, Commenced work.
To three dollars in cash for home, ... 3.00]"

Q. 21. I notice that the debtor side of the account foots up seventy-seven dollars, and that on the opposite page there is an entry, as follows:

"	Con	Cr
1874		
April 1st,	By seven months & half	77.00"

Inasmuch as the left-hand page is marked "Dr." and the right-hand page, directly opposite, is marked "Con Cr," and the footing on the debtor side is $77.00, while the seven months and a half on the credit side is figured also at $77.00, I should judge that they both belong to the same account, and will ask you to examine and compare them carefully, and state what is your recollection and belief now about it.

[*Objected to as leading.*]

A. Yes; I guess it did belong to it.

[*Respondents' counsel asks the Examiner to copy the entire account upon the record at this point. The Examiner copies it as follows:*

"		Clary Eppley	Dr
1873			
April	14,	Commenced work	
		To three dollars in cash for home	3.00
		To corset	1.00
		To cash five dollars	5.00
		To cash for stockings and notions	1.25
July	19,	To twelve dollars in cash	12.00
		To seven dol at different times	7.75
Aug.	15,	To one pair of shoes	2.65
Nov.	28,	To one pair " "	2.50
Dec.	6,	To six dollars in cash Mechanicsburg	6.00
"	14,	To one dollar in cash to Harrisburg	1.00
		To mending of shoes	1.00
		To cash at different times	2.85
		To check for thirty dol—	30.00
			$77.00

On page 43 the following entry appears:

"	Con	Cr
1874		
Ap 1st,	By seven moth & half	$77.00"]

[*Whole deposition objected to as immaterial and not competent at this stage of the case.*]

Cross-examined by Mr. Storrow, de bene esse:

Cross-Q. 22. Did you hire the Moser farm while you lived there?

A. No, sir; I farmed on the shares.

Cross-Q. 23. Farmed on shares all the years you lived there?

A. Yes, sir.

Cross-Q. 24. Whom did you have for hireling?

A. Why, I had different ones; the first I had was Eli Bixler, and then I had Daniel Good, and Thomas Holland, Jacob Collins; that is al I can just think of now.

Cross-Q. 25. How many years did Jacob Collins work for you?

A. Six or eight years, I suppose; I could hardly tell you exactly.

Cross-Q. 26. What did you pay him?

[*Objected to as immaterial.*]

A. I paid him $180 a year.

Cross-Q. 27. How many years did you live on that farm?

A. That is more than I can say—how many years—four or five years, or along there; maybe six years.

Cross-Q. 28. Do you remember in what year you went on to that farm?

A. No, that I can't remember.

Cross-Q. 29. In what year did you move away from that farm?

A. In 1878.

Cross-Q. 30. You have said that the Zinn clover-mill bridge was carried away twice; if you remember of its being carried away at any other time, will you tell me all you remember about it?

[*Objected to as irrelevant to the examination-in-chief.*]

A. I think it had been taken away a year or so before 1873; I think so.

Cross-Q. 31. Do you know anything else about its having been taken away at any time; and, if so, what do you remember?

A. I do not.

Cross-Q. 32. Where did you live before you went to H. G. Moser's farm?

A. I lived with him—hired; he was farming there on the same place.

Cross-Q. 33. How long did you live on that place?

A. I came to live with him in 1862.

Cross-Q. 34. Did you live on that place from 1862 to 1878?

A. Yes, sir.

Recess until 2, P. M.

2.15, P. M.

Examination resumed.

Cross-Q. 35. Where did you go to when you left the Moser farm in the spring of 1878?

A. To Berks county.

Cross-Q. 36. To the same place where you live now?

A. Yes, sir.

Cross-Q. 37. Were you present in this room when your wife testified here this morning?

A. Yes, sir.

Examination taken, reduced to writing, and by the witness affirmed and subscribed to before me, this 6th day of June, 1884.

FRED. M. OTT,
Examiner.

JACOB W. MOSER.

Mrs. CLARA BOYER, *being produced, sworn, and examined, saith:*

Examined by Mr. Hill:

I am the wife of Jacob E. Boyer, of Douglass township, Berks county, Penna.

Q. 1. What was your maiden name?

A. Clara Epply.

Q. 2. Did your family live with the family of Mr. Jacob W. Moser, in Fairview township, York county, Pennsylvania?

A. Yes, sir.

Q. 3. When did you first begin to live with that family?

A. On the 14th of April, 1873.

Q. 4. Did anything of interest take place in Mr. Moser's family that day?

A. Their daughter Hetty was born that day.

Q. 5. How long did you live in Mr. Moser's family at that time?

A. One year.

Q. 6. After that, did you again live with Mr. Moser's family? If so, when next?

A. Yes, sir; in 1875.

Q. 7. About what time in 1875 did you go to live with Mr. Moser's family the second time, and how long did you live with him that time?

A. In the spring—I don't remember the exact date—and I lived with him a year; it was in the spring some time.

Q. 8. Did you live with him again the third time? If so, when?

A. Yes, sir; in the fall of 1877, I went there.

Q. 9. When they moved away to Berks county, did you go with them?

A. Yes, sir.

Q. 10. Do you remember anything about Mr. Moser's having a field of corn down on the bottom-land, on the side of the Yellowbreeches creek, at any time while you lived with him?

A. Yes, sir; in the year 1873.

Q. 11. Did you help them do anything about the corn-field that summer? If so, what?

A. Yes, sir; I helped them pull the wild sweet-potato vines out of it.

Q. 12. Did anything happen to that corn-field that summer? If so, what?

A. Yes, sir; Mr. Deckman's cattle got in and broke down the corn.

Q. 13. How far along was the corn in its growth at that time?

A. It was in roasting-ear time; we gathered the corn that was broken down to dry.

Q. 14. How happened it that Mr. Deckman's cattle were able to get into that corn-field at that time?

A. A flood had taken the fence away.

Q. 15. When did that flood occur?

A. In the year 1873.

Q. 16. Do you know whether that flood did, or did not do any damage to the foot-bridge at Zinn's clover-mill on the Yellowbreeches?

[*Objected to as leading.*]

A. It did.

Q. 17. What damage did it do to it, and how?

A. It was taken away by a tree, or a part of a tree.

Q. 18. Do you know anything of an ice-flood on the Yellowbreeches doing any damage to the bridge at Zinn's clover-mill at any time?

A. Yes, sir; in the year 1875.

Q. 19. How far did you live from Mr. Moser's house?

A. About a mile.

Q. 20. In York county?

A. Yes, sir.

[*Deposition objected to as immaterial and not proper sur-rejoinder.*]

Cross-examined by Mr. Storrow, de bene esse:

Cross-Q. 21. What makes you think that the clover-mill bridge was carried away by a tree in 1873?

A. I heard the people say so at the time it happened.

Cross-Q. 22. Do you know Daniel Drawbaugh?

[*Objected to as new matter.*]

A. Only by hearing persons speak of him.

Cross-Q. 23. Do you know John B. Drawbaugh, of Milltown?

[*Same objection.*]

A. No, sir.

Cross-Q. 24. When were you married?

A. In the year 1879.

Cross-Q. 25. Did you live with Mr. and Mrs. Moser in Berks county from the time they went there until you were married?

A. No, sir; I did not.

Cross-Q. 26. How long did you live with them?

A. I was only there two weeks. I went down with them to Berks county when they moved, and I stayed two weeks with them.

[*Each and every question and answer in the direct examination objected to as hearsay.*]

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me this 6th day of June, 1884.

FRED. M. OTT,
Examiner.

CLARA BOYER.

2.30, P. M.

Examination before Mr. Charlton resumed, pursuant to adjournment.

Present, Mr. Howson for complainants and Mr. Jacobs for respondents.

PETER HESS, *being produced and affirmed, upon examination, saith:*

I live in Upper Allen township, Cumberland county, Pennsylvania; my age is forty years; am a farmer.

Examined by Mr. Jacobs:

Q. 1. How long have you lived where you now reside?

A. Four years last March—the 23d of March.

Q. 2. Where did you live last before you moved there?

A. Lived on my father's farm along the Yellowbreeches creek.

Q. 3. How far from Zinn's clover-mill?

A. Short half a mile down the creek.

Q. 4. How far from the Yellowbreeches creek?

A. Well, not a hundred yards—the house, I mean.

Q. 5. Did the farm run down to the creek?

A. Yes, sir; it run along the creek.

Q. 6. In what township and county is that farm?

A. Fairview township, York county.

Q. 7. Will you look at the map of the vicinity of Eberly's Mills offered in evidence by complainants and bound in their book of exhibits, and point out, if you find it there, the location of the house on your father's farm referred to by you?

[*Map shown to witness.*]

A. Yes.

[*Witness points out house marked "C. Hess." on the York county side of the Yellowbreeches creek, near said creek, and upon the road leading from Miller's grist and saw-mill.*]

Q. 8. What is your father's name?

A. Christian Hess.

Q. 9. Did you ever farm that place?

A. I took possession of it in '73—the spring of '73.

Q. 10. How long did you continue to farm it?

A. Till the spring of '80, when I moved away.

Q. 11. When were you married?

A. November, '74.

Q. 12. There is an island in the Yellowbreeches creek, which has been alluded to in the testimony here as the island at Hess's; can you tell me where it is?

A. It's quite a short distance above the place where I watered my horses when I had possession of the farm—or had done so for all my recollections.

Q. 13. Had you lived upon the farm before you took possession of it and began to farm it yourself?

A. I was raised there.

Q. 14. How far from your house was the place where you watered your horses?

A. About a hundred yards.

Q. 15. Did you water them down at the creek?

A. I did.

Q. 16. Is the island, concerning which I have asked you, nearer to the Cumberland, or York county bank of the creek?

A. Nearest to the Cumberland bank.

Q. 17. How wide is the creek at that point?

A. Well, a hundred and twenty-five feet.

Q. 18. If you have any papers or memoranda which fix the time when you took charge of your father's farm will you please produce them, in order that the Examiner may copy them upon the record?

A. Here it is.

[*Witness produces small pass-book containing appraisement, &c., as follows:*

"List of appraisement of the stock and farming implements which belonged to Christian Hess and taken by his son Peter at the following valuation—March 13th, A. D., 1873."

[*Here follows a list of articles whose appraised value makes the sum of* $1,560.30.]

"Received March 13, 1873 of Peter Hess fifteen hundred sixty dollars and thirty cents in full the foregoing valuation for the stock and farming implements, &c.

March 13th A. D., 1873.
(Signed)
Christian Hess."]

Q. 19. In whose handwriting is the receipt which follows the appraisement signed?

A. By my father.

Q. 20. When was the appraisement made?

A. March 13, 1873.

Q. 21. When was the receipt signed by your father?

A. March 13, 1873.

Q. 22. Did you take possession and begin to farm the place before

or after the time when that appraisement was made and the receipt signed?

A. Took possession of the farm the day the appraisement was made and the receipt signed.

Q. 23. Whilst you were farming that place, do you remember of any floods that occurred along the Yellowbreeches creek?

[*Objected to as leading as to the time, and as incompetent at this stage of the case; objection to apply to any questions concerning floods in the Yellowbreeches.*]

A. In August—or after the 9th of August of 1873.

Q. 24. Do you mean that a flood in the Yellowbreeches occurred at that time?

[*Objected to as leading.*]

A. Yes, sir.

Q. 25. Was the island of which you have spoken in sight of the place where you watered your horses?

[*Same objection.*]

A. Yes, sir.

Q. 26. Did you see the island at or about the time of the flood of which you have spoken?

[*Same objection.*]

A. After the flood.

Q. 27. Did you notice anything unusual about or upon the island?

[*Same objection.*]

A. Yes, sir.

Q. 28. Please state what it was.

A. A log containing a limb with the pier or pillar of a foot-log.

Q. 29. Whereabouts did you see them?

A. At the far end, below where I watered my horses, a short distance; that is, I watered my horses a short distance below the island.

Q. 30. At the far end of what did you see them?

A. At the far end of the island; that is, up the creek from where I watered my horses.

Q. 31. That would be the upper end of the island, would it?

[*Objected to as leading.*]

A. Yes, sir.

Q. 32. Were the tree and pier or pillar of a foot-log on the island, or against it, or how were they located when you saw them?

A. They were lying on the island, with one end extending and the other end towards the York county shore.

Q. 33. When did you see them?

A. After the water fell of the flood of August 9, 1873.

Q. 34. How long after the water fell did you see them?

A. Well, after the water went down so that I went to the creek with my horses, I saw them lying there.

Q. 35. Upon the map which was shown you a while ago, I find on the York county side of the Yellowbreeches creek, near the house which you have pointed out as the one in which you lived, and upon the same road, a house marked "Jas. W. Moser." Will you tell me who occupied that house at the time you took possession of your father's farm and during the year succeeding?

A. Jacob W. Moser.

Q. 36. How far is that from the house which you occupied?

A. About a quarter of a mile.

Q. 37. Is that Jacob W. Moser the same person who testified here to-day?

A. Yes, sir.

Q. 38. A little further down on the map I find a house marked "H. G. Moser." Who occupied that house during the first year you farmed your father's place?

A. Jacob Collins.

Q. 39. Still a little further down on the map I find another house marked "H. G. Moser." Who occupied that house during the same year?

A. Levi Haring.

Q. 40. On the Cumberland county side I find a house marked "Dr. Whitman." Who occupied it during the first year that you farmed your father's place?

[*This line of examination objected to as not seeking the best evidence of the matters inquired of; objection to apply to this, to questions 38 and 39, and to any succeeding questions of the same nature.*]

A. Samuel M. Deckman.

Q. 41. The next house along the creek I find marked "A. Zinn;" who occupied that during the same year?

A. Adam Henry Zinn.

Q. 42. A little lower down on the map, farther from the creek, and between the last-mentioned house and the clover-mill, I find another house marked "A. Zinn;" who occupied that house during the same year?

[*Objection renewed.*]

A. Adam Zinn.

Q. 43. How was Adam Zinn related to Adam Henry Zinn?

A. Adam Zinn was Adam Henry Zinn's father.

Q. 44. Immediately below the house marked "Dr. Whitman," I find a house marked "A. Shell;" who occupied that house during the same year?

A. Andy Shell and his son, Abraham Shell, with their two wives and a few children of Abraham Shell's.

Q. 45. Is that Andy Shell now living or dead?

A. He is dead.

Q. 46. Same question as to Abraham Shell.

A. He is dead.

Cross-examined by Mr. Howson, de bene esse:

Cross-Q. 47. About what is the length of the island at Hess's?

A. About a hundred feet.

Cross-Q. 48. Are there any trees or any shrubbery on that island?

A. There was at that time.

Cross-Q. 49. When did you know that Mr. Jacob W. Moser had testified, or was going to testify, in this case?

A. This morning when I came to Mr. Jacobs' office.

Cross-Q. 50. What time this morning was that—and did you see Mr. Moser there?

A. Between nine and ten o'clock—saw Mr. Moser there.

Cross-Q. 51. Whom else beside Mr. Moser did you see there?

A. His wife—and it used to be Clara Eppley when I knowed her, but since she's married to Edmund Boyer—and others, my brother Samuel, Samuel Deckman and his daughter, George Martin, Abraham Shank, John Hamilton, Squire Shoop, and the two Drawbaughs, and there was a few men in that I didn't know.

Cross-Q. 52. How long were you at Mr. Jacobs' office this morning?

A. Till we went to dinner.

Cross-Q. 53. Just how far below the foot of the island at Hess's was it that you were accustomed to water your horses?

A. Short distance.

Cross-Q. 54. Can you not answer me more precisely than that?

A. Well, I don't know as I've measured it, just particularly.

Cross-Q. 55. Did you ever measure the width of the creek at the island?

A. I didn't.

Cross-Q. 56. Did you ever measure the length of the island?

A. I didn't.

Cross-Q. 57. Were you ever summoned down here to testify in this case before this time?

A. I was summoned.

Cross-Q. 58. By whom and when?

A. Abraham Shank; last November—that's the November of '83.

Cross-Q. 59. Did you come to Harrisburg then?

A. Yes, sir.

Cross-Q. 60. Did you see Mr. Hill and Mr. Jacobs, or either of them, on that occasion?

A. I did.

Cross-Q. 61. I understand, from your testimony, that you were living on the farm, which you commenced to work on your own account in 1873, as you have stated, from the time you were a child down to the year 1880; is that correct?

A. Yes, sir.

Cross-Q. 62. I also understand that you were accustomed to water your horses, or your father's horses, at this spot a short distance below the island for a number of years before 1873, and from that time forward down to the year 1880, when you left the place; is that correct?

A. Yes, sir.

Examination taken and reduced to writing by me, and by the witness affirmed to and subscribed in my presence this 6th day of June, 1884.

PAUL CHARLTON,
Notary Public, Special Examiner.

PETER HESS.

MINNIE A. DECKMAN, *being produced, sworn, and examined, (before Mr. Ott,) saith:*

Examined by Mr. Hill:

I reside in Lower Allen township, Cumberland county, Pa.

Q. 1. Are you a daughter of Mr. Samuel M. Deckman, who was examined last November as a witness for respondents in this case?

[*See respondents' sur-rebutting record, p.* 247.]

A. Yes, sir.

Q. 2. Do you live at home with your father?

A. Yes, sir.

Q. 3. Do your remember what year it was that your father moved onto the farm which he now occupies?

A. Yes, sir; it was on the 4th of March, 1873.

Q. 4. It is in evidence in this case that there was a flood in the Yellowbreeches creek in August, 1873; do you remember anything about that flood or not?

A. Yes, sir.

Q. 5. Tell us anything that you remember about that flood.

A. It was a very high water, and it took the foot-bridge away at Zinn's clover-mill.

Q. 6. If you know, state how the foot-bridge was taken away.

A. By a large stub of a tree.

Q. 7. Did you ever see that stub of a tree?

A. Yes, sir.

Q. 8. Where did you first see it?

A. At Hess's island.

Q. 9. Where is Hess's island?

A. Between Hess's and Zinn's clover-mill; it is about a quarter of a mile up the stream from my father's house.

Q. 10. How soon after the bridge was carried away did you see the stub of a tree at Hess's island?

A. About three or four days.

Q. 11. Did you see anything else besides the stub of a tree at that time on Hess's island?

A. Yes, sir; bridge timber was on the one part of the tree.

Q. 12. Do you know what became of that stub of a tree afterwards?

A. Yes, sir; about four or five weeks afterwards it came down in front of our meadow.

Q. 13. And did it lodge there?

A. Yes, sir.

Q. 14. Did you see that tree a good many times after it took the bridge away, or not?

A. Yes, sir.

Q. 15. Please look at the sketch which I now hand you, and state who made it, and when, and what it represents.

A. This sketch I stated on Wednesday evening; I told my father that I could draw the very picture of the log that took the bridge away, as it lay on what is called the "ripples" in front of Ezekiel Worley's.

Q. 16. Do you mean you made it on Wednesday evening?

A. Yes, sir.

Q. 17. You have stated that the log stuck awhile in front of your father's place; where did it go from there?

A. To Worley's ripples.

Q. 18. What became of it after it got to Worley's?

A. Mr. Worley cut the top part of it off, and left the root part of it until high water carried it off.

Q. 19. Do you remember a flood sometimes called the ice-flood in the Yellowbreeches?

A. Yes, sir.

Q. 20. Was that before, or after the flood of 1873?

A. After.

Q. 21. During the first summer that your father lived on the farm which he now occupies, do you recollect whether he did any work on roads?

A. Yes, sir; he did.

Q. 22. Do you recollect whom he worked under while doing work on the roads that year?

A. Yes, sir; Andrew Shell.

Q. 23. Was Andrew Shell the road supervisor?

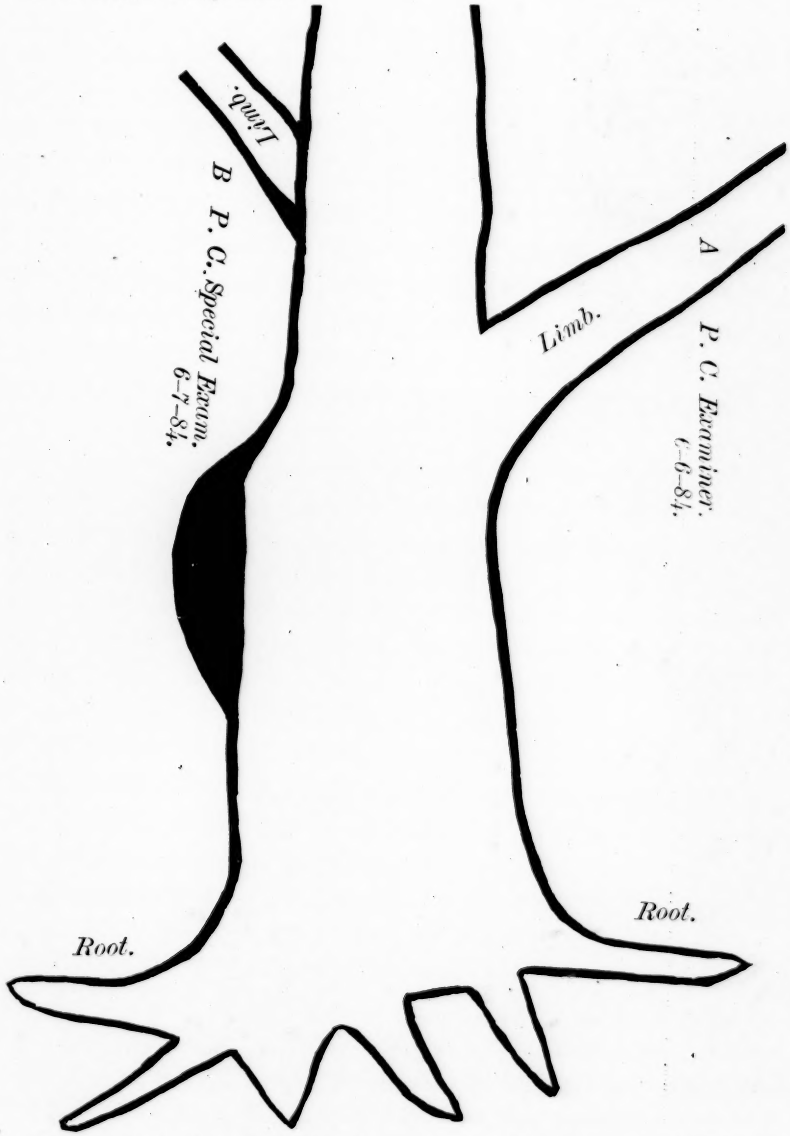
A. No, sir.

Q. 24. Who was the supervisor that year, if you know?

A. Henry Bitner.

[*The sketch above referred to is put in evidence and marked "Exhibit Tree, 1873, Flood."*]

The sketch is as follows:



Q. 25. About how long should you judge that tree was which you first saw at Hess's Island with bridge timber attached to it?

[*Objected to as asking for guess-work.*]

A. About five or six yards I suppose it was, as near as I can tell.

Q. 26. About how thick was it at the butt?

A. I think, probably, it was a little over two feet, as near as I can tell.

Q. 27. You have told us about seeing the tree and bridge timbers lodged at Hess's Island. Did or did you not have occasion to cross the Yellowbreeches at Zinn's mill soon after that flood of 1873?

A. No, sir.

Q. 28. Were you up there while the foot-bridge was gone that summer or fall?

[*Objected to as assuming and as leading.*]

A. Yes, sir.

[*Deposition objected to as relating to matters immaterial in themselves, and as not competent in sur-rejoinder.*]

Cross-examined by Mr. Storrow, de bene esse:

Q. 29. Will you please tell me how old you are?

A. I am twenty-one years old.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 6th day of June, 1884.

FRED. M. OTT,
Examiner.

MINNIE A. DECKMAN.

GEORGE MARTIN, *being produced, sworn, and examined, saith:*

Examined by Mr. Hill:

I am the same George Martin who testified for the respondents last fall (see respondents' printed sur-rebutting record, pp. 307 to 310).

Q. 1. In your former deposition in this case, you testified in substance that you had knowledge of the flood that took place on the Yellowbreeches in 1873, and went out on the high water in a boat and picked up watermelons, and also that you saw a tree coming down on the flood having bridge-timber entangled with it; where was that tree when you first saw it coming down on the flood?

A. A little above Hess's island, coming down.

Q. 2. What were you doing at the time?

A. Going up along the Cumberland side in a boat.

Q. 3. Do you notice what became of that tree after you saw it floating down above Hess's island?

A. Yes, sir.

Q. 4. Tell us what became of it.

A. I seen it lodge on the island.

Q. 5. Did you know whether it stayed long on the island or not?

A. I didn't stay there very long; it might have been a week or two weeks, for what I know. I didn't take particular notice when it went away.

Q. 6. Do you know where it went to when it went away from Hess's island?

A. Yes, sir.

Q. 7. Where?

A. It lodged in front of Samuel Deckman's place, in the creek.

Q. 8. When it lodged at the upper end of Hess's island, was the bridge timber still entangled with it?

A. Yes, sir.

Q. 9. When it lodged in front of Samuel Deckman's place, was the bridge timber still entangled with it?

A. That I don't know. I didn't see it lodged there; the last time I saw it it was at the upper end of Hess's island, and the timber was on it.

Q. 10. Then, when you stated that it came down to Deckman's, you didn't state that from your own knowledge but only from hearsay, did you?

A. I saw the tree there, but the timber was not on it; the last time I saw the bridge-timber it was at Hess's island. I thought you meant the bridge-timber by your last question.

[*Deposition objected to because not competent at this stage of the case, and because relating to a matter in itself immaterial.*]

Cross-examination declined by Mr. Storrow.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 6th day of June, 1884.

GEO. MARTIN.

FRED. M. OTT,
Examiner.

Adjourned until June 7, 1884, at 10, A. M.

JUNE 7, 1884, 10, A. M.

Examination resumed.

Present, same counsel.

J. HARPER SEIDEL, *being produced, sworn, and examined, saith:*

Examined by Mr. Hill:

I am the same J. Harper Seidel who testified as a witness for respondents in this case on January 31, 1884. [See respondents' printed sur-rebuttal record, page 848–849.]

Q. 1. Do you know a man named Samuel Trafford, who formerly lived at Marysville, Perry county?

A. Yes, sir.

Q. 2. Did he, at any time, work for your firm?

A. Yes, sir.

Q. 3. In what capacity was he employed by your firm?

A. As run-out man.

Q. 4. At what time did he last work for your firm?

In the month of October, 1878.

Q. 5. When he left the employ of your firm, did anybody take his place? If so, who?

A. He was succeeded by his brother, Thomas Trafford.

Q. 6. Who was the book-keeper of your firm at the time Samuel Trafford left the employ of your firm and was succeeded by his brother, Thomas Trafford?

A. I was.

Q. 7. Have you here those books of your firm containing the last entries in Samuel Trafford's account or time, and the first entries in Thomas Trafford's account or time?

A. I have.

Q. 8. Will you please produce the book, and point out the latest records which it contains of Samuel Trafford's work, and the earliest records which it contains of Thomas Trafford's work, after Samuel Trafford left?

A. I produce it. The last entry of Samuel Trafford's work was made on October 26, 1878, when he is credited with running out 14,350 pounds of run-out metal; the first entry of Thomas Trafford's work was made October 28, 1878, where he is credited with running out 14,740 pounds of run-out metal.

[*Witness points out the entries in the book.*]

Q. 9. In whose handwriting are these entries, and when were they made?

A. The handwriting is mine. I can't tell exactly when these entries were made—the exact day—they were made about that time. They were made before the close of the month of October, 1878, because we settle monthly, and have all our accounts in by the end of the month.

Q. 10. Were those entries made in this book in the regular course of your firm business?

A. They were.

Q. 11. You have stated that Samuel Trafford left your employ at that time and Thomas Trafford succeeded him; did you, or did you not, at the time, understand that Samuel Trafford and Thomas Trafford exchanged places, Thomas Trafford coming to your work and taking Samuel's place, and Samuel Trafford going to some other works and taking Thomas' place?

[*Objected to as leading.*]

A. Yes, sir; at the request of Mr. J. C. Fuller, president of the South Mountain Mining and Iron Company, in whose employ Samuel Trafford had formerly been, we let him have Samuel Trafford again, and took in exchange his brother Thomas, who had been running-out for Mr. Fuller.

Cross-examination waived by Mr. Storrow.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 7th day of June, 1884.

FRED. M. OTT,
Examiner.

J. HARPER SEIDEL.

CALVIN S. EDWARDS, JR., *being produced, sworn, and examined, saith:*

Examined by Mr. Hill:

My age is about thirty-one; I reside at Pine Grove furnace, Cumberland county, Penna. I am book-keeper for the South Mountain Mining and Iron Company.

Q. 1. How long have you been book-keeper for that company?

A. Since the third day of June, 1878.

Q. 2. Do you know two men named Samuel Trafford and Thomas Trafford?

A. I know both of these men.

Q. 3. Have they ever worked for your company during the time you have been its book-keeper?

A. They have.

Q. 4. Did they both work at the same time, or did you have first one of them and then the other, in the employ of your company?

A. Thomas worked first, and when he left Samuel came in his place, or took his place.

Q. 5. About what time was it that Thomas left your works and Samuel took his place?

A. The latter part of October, 1878.

Q. 6. In what capacity were those two men employed by your company?

A. As run-out men at forge.

Q. 7. Have you any book here showing the work of run-out men at your forge in October and November, 1878?

A. Yes, sir.

[*Witness produces book.*]

Q. 8. Will you please point out the entries in the book relating to the work of Thomas Trafford and Samuel Trafford for your company in October and November, 1878?

[*Witness points to page* 160 *of the book, and says:*]

A. In October, 1878, I find Thomas Trafford credited with seventy-two and one half tons of run-out. I find no credit for him for the month of November. [referring to page 288 of the same book:] In October, 1878, I find Samuel Trafford, credited with nineteen tons of run-out—about three days' work. In November, 1878, he is credited with one hundred and fifty-nine and one half tons of run-out.

Q. 9. In whose handwriting are those entries in the book which you have produced?

A. They are in my handwriting.

Q. 10. Is the book one of the regular books of business entries of the company, and were these entries made in the regular course of its business?

A. It was at that time. The entries were made immediately after the close of each month.

Q. 11. Referring now to the account of Thomas Trafford, on page 160 of the book, I find that the credit for October, 1878, is as follows: October 31, by labor, seventy-two and one half tons run-out, $65.25. If I

understand you correctly, that item was entered at the end of the month of October, and did not indicate that the work was performed on October 31, but that it was performed during the month of October; am I correct?

A. Yes, sir.

Q. 12. And, if I understand your previous testimony correctly, the first entry in Samuel Trafford's account, on page 288, which is as follows: "1878, Oct. 31, by 19 tons run-out, $16.15," does not indicate that the work was all performed on the 31st day of October, but that it was performed in the month of October, and before the 1st of November; is my understanding correct?

A. It is.

Q. 13. I find no entries relating to either Thomas Trafford or Samuel Trafford in this book of later date than November 30th, 1878; will you explain why?

A. Thomas Trafford did not work for us after October, 1878; that accounts for there being no entry relating to him after that date. Samuel Trafford worked for us for some time after November, 1878; I cannot say how long. His credits after November, 1878, were kept in another book, which I have not with me. This book which I have here closes with November, 1878, and doesn't contain any accounts after that date.

Q. 14. It appears from your book that Thomas Trafford was working for your company in October, 1878; how long had he been working for your company right along before October, 1878?

A. From the early part of May, 1878.

Q. 15. This book shows his work during that period, does it?

A. Yes, sir; it does.

[*Respondents' counsel requests the Examiner to copy on to the record at this point the last three entries on the credit side in Thomas Trafford's account, and also all the entries in this book relating to Samuel Trafford's account.*

The Examiner copies them as follows:

Thomas Trafford's account:

"1878

Sept. 1, By balance. 32.50

30, " labor 67 tons run-out, ... 60.30

Oct. 31, " " 72½ " " " . . . . . 65.25"

Samuel Trafford's Account:

" Dr Samuel Trafford, Cr.

1878			1878		
Oct. 31,	To J. Tuckly Board . .	1.33	Oct. 31,	By 19 tons run-out	16.15

Nov. 16,	" order 503,	. . . .	1.00	Nov. 30,	" 159½ "		135.58
28,	" Cash	. . . . .	14.82				
29,	" " 81	. . . . .	.60				
30,	" J. Tuckly Board	. .	10.94				
	To Balance to Ledger "B"		123.04				
			151.73				151.73"]

Cross-examination waived by Mr. Storrow:

Examination taken, reduced to writing, and by the witness sworn and subscribed before me this 7th day of June, 1884.

FRED. M. OTT,
Examiner.

C. S. EDWARDS.

Recess until 2, P. M.

SAMUEL TRAFFORD, *being produced, sworn, and examined, saith:*

Examined by Mr. Hill:

My age is about forty-four; I reside at Jonestown, Lebanon county, Pa. I am what is known as a run-out man.

Q. 1. Did you ever work for Seidel Brothers, at Marysville, Perry county, Pa?

A. I did.

Q. 2. When did you do the last work for them that you ever did?

A. In 1878, the 26th of October.

Q. 3. About how long had you been working for them up to October 26, 1878?

A. I went there and commenced work in 1872.

Q. 4. When you ceased working for them, on October 26, 1878, where did you next go, and what did you do?

A. I went from there over to the South Mountain Mining and Iron Company, at South Mountain, in Cumberland county; I ran the run-out there, the same as I did at Seidel's.

Q. 5. How soon after the 26th of October, 1878, did you go to work for the South Mountain Mining and Iron Company at their works?

A. Two days.

Q. 6. On the books of the South Mountain Mining and Iron Company we find you credited with nineteen tons of run-out in October, 1878; how does that accord with your recollection?

A. That is the amount of iron I run in that month—nineteen ton.

Q. 7. About how far is it from Harrisburg to the works of the South Mountain Mining and Iron Company, where you worked?

A. It is generally called eighteen miles from Carlisle, and the distance from here to Carlisle, I think, is eighteen miles, too; that would make it about thirty-six miles.

Q. 8. When you left Seidel Brothers, and went to the South Mountain Mining and Iron Company's works to work, was there any exchange of workmen between that company and Seidel Brothers? If so, please explain how that was.

A. I exchanged jobs with my brother Tom: he took my place at Seidel Brothers', and I took his place with the South Mountain Mining and Iron Company.

Q. 9. From the time of that exchange, how long did you work for the South Mountain Mining and Iron Company at their works?

A. Till some time in 1880.

Q. 10. Where did you then go to work?

A. At Port Oran, New Jersey.

Q. 11. And where have you been at work since you left Port Oran?

A. I haven't worked at my trade since; I have worked about home there at Jonestown.

Q. 12. When you were working at Seidel Brothers', were you ever on the Thomas Draper farm, just back of the village of Marysville, and which was at one time occupied by Mr. George W. Kissinger?

A. I was.

Q. 13. There was on that farm a hydraulic ram, for the purpose of raising water from the spring to the house, and the question has arisen in this case as to how long ago that ram was put in there; will you inform us whether or not you ever saw that ram on the Draper farm?

A. I did.

Q. 14. And will you inform us also when you saw it, and how often, and where you were employed at that time?

[*Objected to as not competent at this stage of the case.*

Respondents' counsel, in reply to this objection, calls the attention of the Court to the character of the depositions taken by the complainants in their so-called evidence in rejoinder.

Complainants' counsel call the attention of the Court to the evidence introduced by respondents during their so-called sur-rebuttal, in their at-

tempt to support the testimony given by their witness, Thomas Draper, in his direct examination.

Respondents' counsel reply that the above statement does not, as they understand the case, represent their sur-rebutting evidence correctly, and of this they simply ask the judgment of the Court.]

A. I can't tell exactly—I am not sure it was 1876—but I am quite sure it was 1877, that I saw it; and I was employed by the Seidels at the time. I couldn't tell you how often I saw it, but I saw it different times—ten, fifteen, or twenty times—perhaps twenty-five times.

Q. 15. Was the ram in position and operating at the time when you saw it, or not?

[*Objected to as leading.*]

A. I seen it in position, and I seen it operating, and I seen it when it stood and wouldn't work.

Q. 16. I judge from your 14th answer that you saw the ram on the Draper place quite frequently while you were at work for the Seidel Brothers; am I correct, or not?

[*Objected to as leading.*]

A. You are correct.

Q. 17. How did you happen to be around there on the Draper place during that period?

A. I got around on different occasions. Very often I was around when I was gunning; and they raised a heap of fruit on the farm: Kissinger was a kind of a truck farmer, and I was sometimes up there for fruit, but as a general thing I was up there with my gun.

Q. 18. After you left the employ of Seidel Brothers, were you ever on the Draper farm again; and if so, when for the first time after?

A. Last Thursday was the first time I have been on it since.

Q. 19. How positive are you that you saw the hydraulic ram on the Draper farm as early as 1877?

A. I am positive I seen it there.

Q. 20. In your fourteenth answer, you referred to the year 1876, also; what is your recollection and belief as to seeing or not seeing it there in 1876?

A. I am not positive that I seen it there in 1876, but my belief is that I did; but I won't be positive on that at all.

Q. 21. What is your recollection as to seeing it there in the year 1878?

A. I have never seen it until last Thursday, since 1877.

Q. 22. When you saw it last Thursday, did you look into the well or hole in which the ram stands?

A. I did.

Q. 23. How did the appearance of the well or hole compare with your recollection of it as it was when you saw it at the time you were working for Seidel Brothers?

A. The ram was in a dilapidated condition, and the wall—I can't recollect of there being a wall around it at that time. I think it was a kind of a box. There is a wall around it now.

Q. 24. Since you came here to Harrisburg to testify, has Mr. J. W. Beers, one of the complainants' agents, had any conversation with you in the city of Harrisburg in regard to this ram?

A. I met Mr. Beers night before last, I think it was, and the conversation we had about the ram was that he told me it showed, by the books of the railroad company, that the pipe was shipped there in 1878.

Q. 25. Did he ask you to go to any hotel with him, or to meet him at any hotel?

A. No; I asked him where he was going, and he said he was going around to the Bolton Hotel, and I should call around and see him.

Q. 26. Did he tell you that he was employed by the Bell Telephone Company?

A. He did.

Q. 27. Do you hold any public office in your town?

A. I am a member of the town council.

Q. 28. When you lived at Marysville, did you have your family there? If so, when did you then move away, and to what place?

A. I lived there two years of the time I worked there; I moved there in 1875 and moved away in 1877; I moved them to Jonestown.

Q. 29. How far is Jonestown from Marysville?

A. It is about twenty-seven miles by road and about thirty-six miles by railroad.

[*Deposition objected to as not competent at this stage of the case.*]

Cross-examined, de bene esse, by Mr. Storrow:

Cross-Q. 30. Mr. George W. Kissinger was a member of the council of the borough of Marysville while you lived there, was he not?

A. I think he was.

Cross-Q. 31. It was in the cars coming down from Marysville that you met Mr. Beers last Thursday, was it not?

A. I met Mr. Beers when I got into the cars at Marysville, and I met

him here at the foot of the Trust Company, on the street; that is where the conversation occurred.

Re-direct by Mr. Hill:

Q. Q. 32. I suppose when you met Mr. Beers at the cars at Marysville you didn't know whether or not his business there was to watch the cars and spot the defendants' witnesses and report to his employers at the Bolton House, at Harrisburg, did you?

A. I did not.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me this 7th day of June, 1884.

FRED. M. OTT,
Examiner.

SAMUEL TRAFFORD.

Mrs. SARAH SMITH, *being produced, sworn, and examined, saith:*

Examined by Mr. Hill:

I am about seventy-four years old, and have been a widow for many years, my husband's name was Lester Smith; I reside at Marysville, Perry county, Penna.

Q. 1. In whose family do you reside?

A. In Mr. Thomas W. Morley's family.

Q. 2. Is Mrs. Thomas W. Morley your daughter?

A. Yes, sir.

Q. 3. How long have you resided with your daughter at Marysville?

A. I came to Marysville with my daughter when she was married eleven years ago.

Q. 4. Mr. Thomas W. Morley was examined as a witness on behalf of respondents in this case, (see respondents' sur-rebutting testimony, pages 567 to 577,) and among other things testified that in the early part of May, 1878, he moved from a house on Main street, Marysville, into the house in which he now lives. Did you live with him in the house on Main street?

A. Yes, sir.

Q. 5. It is also in evidence in this case that Dr. Andrew J. Traver, Mr. Abraham C. Dissinger, and Mr. Thomas W. Morley constituted at one time the board of triennial assessors for the borough of Marysville. Have you any knowledge of that fact?

A. Yes, sir.

Q. 6. A controversy has arisen in this case in regard to a certain hydraulic ram, on the farm of Thomas Draper, which lies just back of the village of Marysville, and which was for a number of years occupied by Mr. George W. Kissinger. If you ever heard your son-in-law, Mr. Thomas W. Morley, mention that ram in his family, will you please tell us the circumstances as you remember them?

[*Objected to as hearsay.*]

A. Well, while Mr. Morley was assessing, he came into the dinner-table and said he had been up to Mr. Kissinger's, and then spoke of the ram that he saw there, and then he went on to explain the working of it and the manner in which the water was carried to the house through that. That is all I know about it. Of course he explained it, as to its size and all about it—explained the manner of its carrying—explained to us the way the water was carried up, although he said he didn't see the working of it—that it was not in operation. That was the conversation.

Q. 7. Will you please tell us in what house this conversation about the ram occurred?

A. It was on Main street—below the railroad, we always called it—we live above the railroad now.

Q. 8. Was it the house that Mr. Morley and his family moved out of in May, 1878?

[*Objected to as leading.*]

A. Yes, sir.

Cross-examination waived by Mr. Storrow.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me this 7th day of June, 1884.

FRED. M. OTT,
Examiner.

SARAH SMITH.

The examination conducted by Mr. Ott is, by consent of counsel, adjourned until Monday, June 9, 1884, at 12 o'clock, M., at the Hotel Richardson, Dover, Delaware; the examination conducted by Mr. Charlton to proceed at Harrisburg, as usual.

FRED. M. OTT,
Examiner.

SAMUEL M. DECKMAN, *being produced, affirmed, and examined, (before Mr. Charlton,) saith:*

Examined by Mr. Jacobs:

Q. 1. You are the same Samuel M. Deckman who testified here in behalf of respondents last November, are you not?

A. Yes, sir.

Q. 2. Will you look at the drawing which I now hand you, and tell me when you first saw it?

[*Paper-drawing marked "Exhibit Tree, 1873 Flood, Fred. M. Ott, Examiner, June 6, 1884."*]

A. Why, yesterday morning I first saw that drawing.

Q. 3. Who showed it to you then?

[*Same objection.*]

A. My daughter Minnie.

Q. 4. If you know how it came to be made, will you please tell us?

[*Same objection, and further objection made to apply to all succeeding questions, to any attempt to extract further testimony from this witness at this stage of the case upon any subject as to which his testimony was taken during the taking of defendants' sur-rebutting proofs.*]

A. Yes, sir; the way it came to be made was, when I came home from down here I asked my daughter Minnie whether she could describe that tree that tore the foot-bridge away that lodged at the head of the island, and afterwards floated to our place. She says she can do it, and draw it off on a piece of paper.

Then it was about nine o'clock in the evening, or a little after; then I went to bed.

Next morning I got up; went to the barn to do my feeding. When I got back to the house, says I to Minnie: "What did you get done last evening?" She says: "Here is what I've drawed up." Says I: "Do you think that looks like the stub?" "Yes," she says, "it does."

Q. 5. Had you or not yourself seen the tree which you asked her to describe?

[*Objections renewed, with the further objection that the question is leading.*]

A. Yes, sir.

Q. 6. Where and when had you first seen it?

[*Objected to as incompetent at this stage of the case.*]

A. When I first saw it it was lodged agin a little island—sometimes called Hess's island—a short distance below the foot-bridge—about five hundred yards—three or four days after the water went down so that a body could get up along the shore, I saw it first.

Q. 7. You say that island is a short distance below the foot-bridge; what foot-bridge do you mean?

A. Called Zinn's clover-mill foot-bridge—it used be.

Q. 8. How far above your place is that island?

A. About two hundred yards; a little further—three hundred yards.

Q. 9 What year and time of year was it when you saw the tree at Hess's island?

[*Objections renewed.*]

A. In 1873. As near as I can get at it, between the latter part of July and the 15th of August.

Q. 10. How did you come to see it there at that time?

[*Same objections.*]

A. My son-in-law and myself had went up along the creek to gather up some drift-wood.

Q. 11. Will you describe how the tree lay at Hess's island when you saw it?

A. Yes, sir; right at the head of the island stood a buttonwood tree leaning across the stream very low; it floated top foremost, and caught on the buttonwood tree by the limb, [indicating the longer limb marked "A" of the tree in the drawing,] and there it stuck fast, with part of the bridge timber hanging to it.

Q. 12. Will you describe the bridge timber which you say was hanging to it?

[*Same objection.*]

A. Yes, sir; it was what I call a pier—the upright that holds up the bridge. My son-in-law was going to take it off for fire-wood, and I told him he'd better let it, the supervisors may come along to gather it up to build the bridge again.

Adjourned until June 7, 1884, at 10, A. M.

JUNE 7, 1884, 10.30, A. M.

Examination resumed, pursuant to adjournment.

Present, Mr. Howson for complainants, Mr. Jacobs for respondents.

Examination of Samuel M. Deckman resumed by Mr. Jacobs:

Q. 13. You have spoken of the time when you and your son-in-law saw the tree with part of the bridge timber hanging to it that lodged at Hess's island; did you ever see that tree afterwards?

A. Yes, sir.

Q. 14. How soon afterwards, and where?

A. Some three or four days after it first lodged there—at the head of Hess's island.

Q. 15. Do you know what became of that tree?

A. Yes, sir.

Q. 16. Please tell us.

A. It lay there for some time—probably three or four weeks—and then it became loose after the bridge timber was taken off, from the creek having raised a little, and it then floated down to my place lodged there against the shore on the Cumberland side till in '75—the ice-flood—then it floated to my next neighbor below, Ezekiel Worley, hooked fast there on the York county side against a buttonwood tree that leaned over the creek; some time during that summer that upright limb that caught the foot-bridge had been chopped off by some one of Worley's family there; after the creek raised again after that the tree went away: that was the last I ever saw of it.

Q. 17. Do you know a place in the creek in front of Ezekiel Worley's that is called the "ripples," or "Worley's ripples"?

A. Yes, sir.

Q. 18. How far from that place did the tree lodge?

A. Not over about forty yards; the ripple is on one side of the creek, and the tree lodged on the other side.

Q. 19. You have spoken of an ice-flood in 1875; do you know whether that flood did any damage to the clover-mill foot-bridge?

A. Yes, sir; it knocked it down. It floated down the creek about—I was working about two hundred yards from the creek about—I was working about two hundred yards from the creek, making post for Jacob Moser. It was then about two o'clock in the afternoon; we heard a roaring and a cracking. Then Mr. Moser says, "Mr. Deckman, let's go to the creek and see what's goin' on." We all went down to the creek—myself, Mr. Moser, Mr. Collins, Edward Boyer went down, and when

we got within about fifty yards of the creek we seen the foot-bridge a-coming. It floated on to what they call Moser's spring; then the ice gorged. Mr. Edward Boyer run back to Mr. Moser's buildings for a log-chain—brought it down. I took it and went in on the ice; looped it around one of the logs; tied it fast to what I call an iron-wood tree. Stayed there for a little while till the ice-gorge broke. The span on the Cumberland side tore loose from the one where I had the chain fast; floated on down the creek; lodged in Comfort's bottom.

Q. 20. What became of the span to which you had fastened the chain?

A. It stayed there in the creek for a good little while; then it was taken out, took back—rebuilt a foot-bridge.

Q. 21. Did you do any work on the roads in Lower Allen township in the year 1873?

A. Yes, sir; first work I ever done in it—in that township.

Q. 22. Who engaged you to do the work?

A. Andrew Shell.

Q. 23. Was he the supervisor that year?

A. No, sir.

Q. 24. Who was?

A. Henry Bitner.

Q. 25. A witness called on behalf of complainants in rejoinder, by the name of Henry M. Bitner, testified [see complainants' printed record, p. 1929,] that his age is sixty-one; residence, Lower Allen township, Cumberland county; occupation, farmer, and that he was supervisor in that township in the year 1873; is that the Henry Bitner of whom you speak?

A. Yes, sir.

Q. 26. Who settled with you for that work?

[*Objected to as immaterial.*]

A. Henry Bitner.

Q. 27. How long after the work was done?

[*Same objection.*]

A. In the spring of 1874—at the election on Slate Hill.

Q. 28. Was the amount of the work which you had done the same as the amount of your tax, or was there a difference?

[*Same objection.*]

A. No, sir; there was a little difference; it was the first year that I

paid road-tax in Lower Allen township; I didn't know what the road-tax generally was on my property before I owned it; Mr. Bitner asked me at the election for road-tax; I asked him how much it was; he told me three dollars and twenty-five cents; I told him I thought that was rather steep for a small property like that, and says I, "I have done some work on the road, employed by Andrew Shell;" says I, "What do you pay a day?" "A dollar a day." Says I, "I've quarried stone out of the road by the orders of Andy Shell." I told him a dollar a day was almost too little for that kind of work. "For that kind of work," he says, "we pay a dollar and a quarter."

Q. 29. How was the difference settled?

[*Same objection.*]

A. He paid me fifty cents.

Q. 30. Was Mr. Bitner present when you did that work?

[*Same objection.*]

A. No, sir.

Q. 31. Had he given you any orders with regard to it, or given you any instructions about it, before you and he had the settlement at the election in the spring of 1874?

[*Same objection.*]

A. No, sir.

Q. 32. Did Andy Shell ask you to do any other work for the township during the year that Mr. Bitner was supervisor besides that work on the road?

[*Same objection, and as incompetent.*]

A. Yes, sir; he asked me to help to put up a foot-bridge at Zinn's clover-mill.

Q. 33. When was that?

[*Same objections.*]

A. In the fall of 1873.

Q. 34. Did you help him?

A. No, sir; I told him I would do anything else on the road for the township but putting up a bridge. I wouldn't go into the water on account of rheumatism; I was plagued a good deal with rheumatism that year.

[*All after "No, sir," objected to as not evidence.*]

Q. 35. Is Andy Shell living or dead?

A. Dead.

Q. 36. When did he die?

A. I'll have to study a little when he did die—'76.

Q. 37. Will you look at the map of the vicinity of Eberly's Mills, offered in evidence by the complainants and bound in their book of exhibits, and point out the house in which you lived in 1873?

[*Map shown witness—witness points to house along the creek, marked "Dr. Whitman."*]

A. That is the place, but it is marked wrong; instead of being Dr. Whitman it should be Daniel Witman.

Q. 38. Will you look at the drawing marked "Exhibit Tree 1873 Flood," and tell me whether or not it does represent what you have said it was drawn for, namely, the tree which lodged on Hess's island, and subsequently floated down the creek, first to your place, and afterward to Ezekiel Worley's?

[*Objected to as leading and incompetent.*]

A. Yes, sir; the identical thing—it can't be drawed any nearer. [Witness indicates limb marked B on drawing.] This limb stuck right out sideways on the water; that limb is what carried the tree with the stub—limb "A"—sticking upwards.

[*Whole deposition objected to as incompetent in sur-rejoinder, and cross-examination, de bene esse, by Mr. Howson.*]

Cross-Q. 39. You have stated that the drawing "Exhibit Tree" was made by your daughter; did you see her make that drawing?

[*Objected to as not correctly stating the testimony of the witness.*]

A. No, sir.

Cross-Q. 40. You have said that it was made when you "came home from down here," by which I understand that you had been in Harrisburg—is that correct?

A. Yes, sir.

Cross Q. 41. What day was that, and what had been your errand to Harrisburg?

A. It was on last Wednesday—well, I was brought here on this telephone arrangement.

Cross-Q. 42. How long were you in Mr. Jacobs' office that day, and whom did you meet and talk with there?

A. Well, in fact I can't tell you how many was there. I came about nine o'clock, left at six—arrived at my home about nine o'clock.

Cross-Q. 43. Name as many as you can of the persons whom you met at Mr. Jacobs' office that day, or with whom you had any talk about the carrying away of the clover-mill bridge, or the flood?

A. Well, Mr. Drawbaugh was there—Daniel—Henry Drawbaugh, A. B. Shank, Squire Shoop, Peter Hess. I don't know whether there was any others in that day or not—now any more.

Cross-Q. 44. When before that had you been at Mr. Jacobs' office on this telephone business?

A. Last fall.

Cross-Q. 45. Name as many persons as you can think of with whom you have had, within the last few months, any talk about the flood or the carrying away of the clover-mill bridge.

A. Ezekiel Worley, Peter Hess, Samuel Hess—that's about all I had any particular talk about that I can remember of. Never did talk a great deal about it at any time.

Cross-Q. 46. I wish you to name to me all the persons whom you can call to mind who have spoken to you, or to whom you have spoken, particularly or otherwise, about this matter of the flood, or the carrying away of the clover-mill bridge, within the last two or three months.

A. I couldn't remember much further than what I've told you there, in particular.

Cross-Q. 47. When, before last Wednesday, was the last time that you had been in Harrisburg?

A. It's a good little while; I couldn't tell you exactly when, I don't suppose; I drove through it about in the neighborhood of the first of April.

Cross-Q. 48. And your recollection is quite clear, is it, that that was the last time you were in this town before last Wednesday?

A. Yes, sir.

Cross-Q. 49. Do you know Edward D. Springer, who has testified for defendants in this case?

A. I do, sir.

Cross-Q. 50. Did you ever have any talk at all with him about the flood or the breaking of the clover-mill bridge?

A. Yes, sir; I had.

Cross-Q. 51. When and where?

A. Here in Harrisburg. Well, that was about two weeks ago, I guess; I hadn't thought of that when I first spoke; two weeks ago last Tuesday it was, I guess.

Cross-Q. 52. What were you doing in Harrisburg on that occasion, and where did you meet Mr. Springer?

A. I met him in Mr. Jacobs' office.

Cross-Q. 53. What were you doing in Mr. Jacobs' office on that occasion?

A. Well, I was brought here on this same business.

Cross-Q. 54. Whom did you meet and talk with at Mr. Jacobs' office on that visit?

A. Mr. Springer—well, I ain't positive about who else was there and I wouldn't a thought of him if you wouldn't a mentioned his name.

Cross-Q. 55. You remember, do you not, that there were a number of persons there besides yourself and Mr. Springer?

A. Yes, sir; there was goin' back and forward, such as I had mentioned before here. Whether they were all just there that day I can't tell. They've been back and forward this week; but I can't just tell positively whether they were there that day or not.

Cross-Q. 56. On how many days this week have you been at Mr. Jacobs' office?

A. Been here since Wednesday morning.

Cross-Q. 57. Do you know John Hamilton?

A. Yes, sir.

Cross-Q. 58. Have you had any talk with him about the flood or the taking away of the bridge?

A. Yes, sir.

Cross-Q. 59. If more than once, say about how frequently.

A. I don't suppose we talked over it more than once—about it. We don't git together very often.

Cross-Q. 60. You are quite sure, are you, that you and he have not talked about the subject more than once?

A. Yes, sir. If I mistake not that happened yesterday.

Cross-Q. 61. You know Mrs. Ellen Shaffer, daughter of Andrew Shell?

A. Yes, sir.

Cross-Q. 62. Have you had any talk with her about the flood or the destruction of the bridges?

A. No, sir—had no conversation with her of any kind for over three years, I suppose.

Cross-Q. 63. You have stated that Andy Shell asked you to help repair the clover-mill bridge; just when was this?

A. Yes, sir; in 1873.

Cross-Q. 64. What I wish is the exact time in 1873, as nearly as you can fix it.

A. Well, as near as I can get at it, it was the latter part of September or the commencement of October—in that neighborhood.

Cross-Q. 65. When, according to your recollection, was it that the bridge was put up?

A. In '73—in the fall.

Cross-Q. 66. You were there, were you, while it was being put up, and saw them putting it up?

A. No, sir; I was not.

Cross-Q. 67. What time in the fall was it put up?

A. It was either September or October—I couldn't tell you the exact date—it was either one of them two months—it wasn't down such a great while till it was put up again.

Cross-Q. 68. You saw the bridge, or the remains of it, between the flood and the time when it was put up; is that the case?

A. Yes, sir.

Cross-Q. 69. How many times, about?

A. It might have been a couple of dozen times—I can't tell you how many times, but I saw it a good many times.

Cross Q. 70. Just how much of the bridge was left standing? Please tell us, as exactly as you can.

A. There wasn't any of it standing.

Cross-Q. 71. Then, if I understand you, the whole bridge was carried clean away; is that it?

A. No, sir.

Cross-Q. 72. How much, and what parts of it remained?

A. Two logs on the Cumberland side, one log on the York county side—them were chained fast on the Cumberland side, and floated around agin the Cumberland shore and stayed there.

Cross-Q. 73. Did you help to chain those logs on the Cumberland shore?

A. No, sir.

Cross-Q. 74. How soon after the flood was it that you saw them chained there?

A. It was right after the flood—same day; the bridge went away in the forenoon about ten o'clock; I had been away—come home about one o'clock, a-horseback; when I got to my lane I met Mr. Shell; he

told me that the foot-bridge was knocked down by a tree. "A little while before the tree came down," he said, "I chained it fast—towards morning. If I hadn't a chained it, the whole business would a went away."

[*All after the word "horseback" objected to as irresponsive, volunteered, and not evidence.*]

Cross-Q. 75. In what position was the log on the York county side when you saw it on that occasion?

A. There was none on the York county side then—when it was taken away. There is only four logs in the bridge. Three of them remained on the Cumberland shore. One and the pier went down the creek. There is only one pier in it—no, there is two piers in it, I think.

Cross-Q. 76. I understand from your answer that one of the logs belonging to the York county side remained. Was that one of the logs which you saw chained when you went up there?

A. It hung to the ones that was chained.

Recess till 2, P. M.

2.30, P. M.

Examination resumed.

[*Witness desires to state that in place of there being four logs in that bridge there are six. Three of them went away and one pier, and three of them and one pier stayed.*]

Cross-Q. 77. You remember distinctly, do you, that there were six logs in that bridge in 1873?

A. Yes, sir; ever since I know it to be a foot-bridge.

Cross-Q. 78. What was the length of these logs, and were they of the same length?

A. Yes, sir. Well, I couldn't tell you just exactly; they might probably be thirty-five—forty feet long; all about the same length.

Cross-Q. 79. Where was the pier which was not carried away when you first went to see the bridge after the flood?

A. In the creek—that stood up—it was not carried away at all.

Cross-Q. 80. You stated this morning that there wasn't any of the bridge left standing. If I understand your last answer, your recollection on that point has changed since the noon recess, as well as your recollection of the number of logs which the bridge contained.

A. That I had stated wrong the first time. How it came I can't contrive, but it just got into my mind that that wasn't right. In place

of four and one pier, there is six logs and two piers. I come to the conclusion that mistakes would be rectified.

Cross-Q. 81. You now state that there was one pier left standing in the creek. Nearest to which of the banks was this pier which was left standing?

A. Cumberland side.

Cross-Q. 82. Was anything at all left on the pier; and if yes, what?

A. No, sir.

Cross-Q. 83. If I understand your testimony, things were left in this condition for a month or two months after the flood. Is that the way you wish to be understood?

A. Yes, sir.

Cross-Q. 84. To which end of the bridge did the three logs belong which you say were chained to the Cumberland side?

A. York county side.

Cross-Q. 85. You have stated that you might have been up at the bridge a couple of dozen times between the time of the flood and the time when the bridge was repaired. What was your business on those couple of dozen occasions?

A. Hauling wood, and so on, and going visiting sometimes. Probably seen it five, six times a day for a few days, as there is a fording right at the bridge—right above it—that we had to cross by the way of getting out of that corner.

Cross-Q. 86. Tell us, if you can, what your next errand up there was, after the time when Mr. Shell told you of the destruction of the bridge, as you have specified.

A. I think the first time I came along was after a load of wood The first time after I saw it, why, Shell and I were there.

Cross-Q. 87. Is the fording, to which you have referred, one which you have had frequent occasion to use both before and since that flood?

A. Have had frequent occasion to use it before and since. Had to use that when I had to go on Grindstone hill—Henry G. Moser's woods.

Cross-Q. 88. When you and Shell went up to see the bridge on the day of the flood, did you pass within sight of the island at Hess's?

A. No, sir; we went by the road, not by the creek.

Cross-Q. 89. Is no part of the creek within sight of the road between your place and clover-mill bridge?

A. Part of it.

Cross-Q. 90. The part nearest the bridge, or the part farthest away from the bridge?

A. The two ends of it—the middle part you can't see.

Cross-Q. 91. About what length of the creek below the bridge can you see from the road?

A. For about two hundred yards.

Cross-Q. 92. You have referred to a buttonwood tree at the head of the island at Hess's, and which you say slanted over; on which side of the island was that buttonwood tree, and in what direction did it slant?

A. Towards the York county side—it stood on the York county side of the island—leaned across towards the York county shore.

Cross-Q. 93. In what direction did the tree-top which you have spoken of incline when it was tangled with or caught by the buttonwood tree, as you have stated?

A. Right along the York county shore of the island; right at the head of it the island comes right up into a point; the tree stood from the point in, not above fifteen or twenty feet—right along the shore—forked end foremost again the buttonwood.

Cross-Q. 94. Did it lie with the root-end up stream—is that what you mean?

A. Yes, sir.

Cross-Q. 95. Was the whole of it, or only the forked end of it, aground on the shore of the island?

A. There was none of it on the shore—just along the edge of it; it was all in water.

Cross-Q. 96. Then it was only the branches of the buttonwood tree which held this root up in the position which you have described?

A. Yes, sir—and the current of the water, as the creek makes a small bend right at the head of the island.

Cross-Q. 97. What quantity of bridge-timber was entangled with this tree-top when you first saw it at the head of the island?

A. The pier.

Cross-Q. 98. What was the size of this pier, as near as you can recollect?

A. Well, the uprights, I suppose, were about twelve feet long.

Cross-Q. 99. And about how thick?

A. Well, I judge it's about six by eight timber.

Cross-Q. 100. Where were you standing when you first noticed this tree-top and pier at the head of the island?

A. Coming up on the Cumberland shore.

Cross-Q. 101. Was the bridge-pier toward the York or the Cumberland side of the creek?

A. It stuck right on the log—on the tree.

Cross-Q. 102. On what part of the tree?

A. On that snag that stuck up on that tree.

[*Witness indicates limb marked "A" on "Exhibit Tree, 1873 Flood" draft.*]

Cross-Q. 103. What part of the tree-top was it which caught in the buttonwood tree

A. The uppermost limb that stood up. [Witness indicates limb "A" on above-named draft.]

Cross-Q. 104. What was it that held the bridge pier fast to the tree-top?

A. The pier had a cross-log on the top that was mortised in the two uprights that was hooked over that stub, [indicating limb "A," as above.]

Cross-Q. 105. Then, if I understand you, the pier which was caught consisted of two uprights, each about twelve feet long, and a cross piece; is that correct?

A. Yes, sir.

Cross-Q. 106. What was the length of that cross-piece?

A. I suppose about six feet.

Cross-Q. 107. Of timber the same size as the uprights?

A. Yes, sir.

Cross-Q. 108. And this pier piece, as I understand you, was hooked in the crotch formed by the trunk and the limb "A," of the tree-top, and in that way was jammed in between the tree-top and the buttonwood tree; is that correct?

A. Yes. sir.

Cross-Q. 109. How soon after you had been up to the bridge with Shell was it that you saw this tree-top and pier-piece at the head of Hess's island?

A. Four or five days after that. It wasn't such a great while—it was very muddy up along shore yet.

Cross-Q. 110. Who, if any one, was with you at that time?

A. My son-in-law, George Martin.

Cross-Q. 111. You and he had walked up along the Cumberland shore together, had you?

A. Yes, sir: gathering drift-wood.

Cross-Q. 112. How far from you and Mr. Martin was this tree-top and pier-piece when you and he were on the Cumberland shore together on that occasion?

A. Why, about twenty-five feet. The stream on the Cumberland side is only about ten feet wide. When the creek gets very low there is hardly any water passes through it at all. Get in on it at any time by way of buttonwood trees cut across it; that has been done in order to get that stream to fill up at that channel.

Cross-Q. 113. Was the stream low on this occasion, when you were up there with your son-in-law?

A. Not very low then yet; it was nearly bank-full yet.

Cross-Q. 114. You say that your son-in-law and you were gathering drift-wood; did you gather a lot of drift-wood on that occasion?

A. Yes, sir.

Cross-Q. 115. Did you take it away with you?

A. At the time? No, sir; not right away. In a few days afterwards Mr. Martin fetched it in the boat down the creek, as the wood was for him. I merely helped to gather it for him. That's the way of it; 'cause I hadn't then anything particular to do, and I just helped him.

Cross-Q. 116. Were you with him when he fetched it down in the boat, as you have stated?

A. No, sir; when he fetched the wood I wasn't with him.

Cross-Q. 117. Did you see him go to fetch that wood?

[*Objected to as immaterial and irrelevant.*]

A. I saw him fetch some of it; I didn't see him fetch the whole of it. In the after part of that summer I wasn't just at home a great deal; besides my little bit of farming, was setting post-fence, and when I had no work at home was generally setting fence.

Cross-Q. 118. Setting fence, do you mean, for other parties?

[*Same objections.*]

A. Oh, yes; yes, sir.

Cross-Q. 119. I gather from your testimony that your son-in-law made several trips to get this drift-wood; is that the way we are to understand you?

[*Same objections.*]

A. Yes, sir; he had gethered right smart of it—gethered enough to last him until in the spring of '74 by buying a half a cord of wood from Andrew Shell. Then he moved away from my place.

Cross-Q. 120. Referring now to the day you and he walked up the bank of the creek collecting drift-wood, how far up the creek did you go?

A. Up to what's called Moser's spring. Of course, we were on the Cumberland side, and Moser's spring is on the York side. We went to opposite Moser's spring.

Cross-Q. 121. How far below the clover-mill bridge is this spring which you call Moser's spring?

A. Between two hundred and fifty and three hundred yards; in that neighborhood. Never measured it, but it's in that neighborhood.

Cross-Q. 122. Is the creek above the spring and below the bridge straight or crooked?

A. Straight; straight between the spring and the bridge.

Cross-Q. 123. When you first noticed the tree-top at the head of Hess's island, were you standing above or below the island?

A. Right above it. Noticed it before we got just there—seen it hanging there. When we got right forenist it we stopped a moment and looked at it. Mr. Martin said——

[*Complainants' counsel objects to the recital of alleged conversations not called for.*]

Cross-Q. 124. When you first saw the tree-top, were you at the island, or below the island, or where?

A. Right along the island—it's only about—it's not more than seventy-five to eighty feet long.

Cross-Q. 125 Then you were not able to see that tree-top from a point below the island—is that so?

A. Not a very great distance, as along the shore its planted with willows quite thick.

Cross-Q. 126. Was the island wooded at that time?

A. There was some timber stood on it—is to this day—a few button-wood trees and, I think, two or three ash—that's all the timber that's on it.

Cross-Q. 127. You have stated that the tree-top became loose after the bridge-timber was taken of; when was that bridge-timber taken off?

A. In five, six weeks afterwards—four, five—in that neighborhood.

Cross-Q. 128. You were there when it was taken off, were you?

A. No, sir.

Cross-Q. 129. How do you know it was taken off?

A. Saw it lying on the Cumberland bank. Mr. Martin was going to fetch it for fire-wood. I told him he'd better let it lie—that they might want it to rebuild the bridge.

Cross-Q. 130. You say this was four or five weeks, or five or six weeks after the flood; what were you and Mr. Martin doing up there on that occasion?

A. Well, we had went over to Moser's spring to fish with hook and line; right below the spring there used to be a good fishing place; as it was a rainy, drizzly day, we had nothing else to do.

Cross-Q. 131. Did you notice the tree-top on that occasion; and if yes, from where?

A. Yes, sir; right at the buttonwood tree, where the bridge timber was on it. It rained in a day or two after that, the tree-top became loose there, the creek had raised a little, it got loose in some shape, and it floated down to my place then.

Cross-Q. 132. Whereabouts was the bridge pier lying when you saw it on this occasion?

A. Right on the Cumberland shore—straight out from the island.

Cross-Q. 133. Had you been up at the island or at the clover-mill bridge between the time when you and Mr. Martin first saw the tree-top and this second time when you say you saw it?

A. No, sir; not to my recollection now.

Cross-Q. 134. When was it that you first noticed that the bridge had been repaired that fall?

A. Some time between the latter part of September and October; somewhere in that neighborhood; I can't exactly tell you just the date; that I can't do.

Cross-Q. 135. How long after Mr. Shell asked you, as you have stated, to help repair it?

A. Oh, it wasn't very long after that; not a great while; probably two weeks; maybe three weeks; but it wasn't a great while.

Cross-Q. 136. Was the clover-mill bridge or the place it occupied in sight from the place you call Moser's spring?

A. Yes, sir.

Cross-Q. 137. Did you and your son-in-law go anywhere else than to Moser's spring the day you say you and he went fishing?

A. Not further up the creek.

Cross-Q. 138. You have stated that on that occasion you noticed the bridge pier lying on the Cumberland bank by the island. Did you see it afterwards? If yes, where?

A. I think I did a few times afterwards; I can't think how many times afterwards; I seen it at different times.

Cross-Q. 139. During how long a time did you continue to see that timber, and was it always at the same place that you saw it?

A. About two weeks—in that neighborhood—that I seen it lying there; not longer—not to my recollection.

Cross-Q. 140. How many times during these two weeks were you up there, and on what errands?

A. I couldn't just positively tell how many times; it might have been probably half a dozen times; it might have been once or twice more.

Cross-Q. 141. Whether it was half a dozen times, or once or twice more, tell us what you were doing up there at those times?

A. Sometimes on fishing occasions; sometimes we had walked up there on Sunday to pass the time away; sometimes we had went up to the old clover-mill.

Cross-Q. 142. Whom do you mean by "we" in your last answer?

A. Sometimes there was some one with me, sometimes there wasn't; that's what I mean by that.

Cross-Q. 143. Who was with you on any of those occasions?

A. Mr. Martin, and Abram Shell, I think, was along one time.

Cross-Q. 143. Did you and Mr. Martin go fishing again during those two weeks or so; and if yes, where did you go to?

A. Why, we had been fishing some two or three times about that time by our place and along the island—hardly ever got above Moser's Spring. Between Moser's Spring and the bridge there's no good fishing with hook or line; the creek's very shallow there.

Cross-Q. 144. Did you, on these several fishing excursions, see the tree-top to which you have referred?

A. One time—the first time Mr. Martin and I had been up fishing.

Cross-Q. 145. Was it after, or before the last time you saw the pier lying on the Cumberland shore, that Mr. Shell asked you to help repair the bridge, as you have stated?

A. That I can't tell positively, whether it was before the timber was taken away from the shore, or whether it was afterwards.

Cross-Q. 146. At what other times, besides in 1873 and the ice flood of 1875, do you remember the clover-mill bridge to have been taken away or broken?

A. It's been taken away at various times after '75—I couldn't just positively state—till this present year it was taken away.

Cross-Q. 147. I understand that you now quite distinctly remember that the bridge has been taken away several times between 1875 and the present time, but that you cannot give me any of the years; is that correct?

A. Not for sure. I think it was down in '77, but I won't say that for certain.

Cross-Q. 148. But you know now, don't you, that the bridge has been down on several occasions between 1875 and the present year?

A. I know it was, but I can't state exactly in what years; that I can't do. It was down twice right along, but in what years I can't tell.

Cross-Q. 149. You remember quite distinctly, do you, that the ice-flood of which you have spoken occurred in 1875, and that has been your recollection all along?

A. Yes, sir. I have something to go by for that. That spring—spring of '75—from about the holidays, I made six hundred mortised posts for Henry G. Moser,—thereby I know it was in the spring of '75—that I did in the spring of '75—from that work I had went, when I chained it fast on the ice.

Adjourned till 11, A. M., June 9, 1884.

JUNE 9, 1884, 11, A. M.

Examination of witness resumed.

Present, Mr. Howson for complainants, Mr. Jacobs and Mr. Melville Church for respondents.

Cross-examined by Mr. Howson, de bene esse:

Cross Q. 150. How do you fix it as having been in 1875 that you made the mortised posts for Henry G. Moser?

A. By the way of a man helping me—I kept time—he worked by the day for me.

Cross-Q. 151. So that your recollection all along has been quite clear on that point; is that the case?

[*Objected to as indefinite.*]

A. Yes, sir.

Cross-Q. 152. Mrs. Ellen Shaffer testified for the defendants last fall (see page 299, defendants' printed sur-rebuttal) that she saw the condition of the clover-mill bridge after the flood of 1873, and noticed that the bridge was "altogether gone." I understand your recollection to be, on the contrary, that one of the piers was left standing, and also that some of the logs were left fastened to the Cumberland county shore; is that correct?

[*Objected to as not proper cross-examination, and as otherwise incompetent.*]

A. Yes, sir.

Cross-Q. 153. By the logs, I understand you to mean the stretchers that stretched from pier to pier; is that so?

A. Yes, sir.

Cross-Q. 154. The day that you and Mr. Shell went up to see the clover-mill bridge, as you have stated, how long were you and he up there waiting at the bridge?

A. Not very long; probably a half an hour or a little longer; not very much longer, though.

Cross-Q. 155. What was the part of the bridge which was chained chained to?

A. Trees.

Cross-Q. 156. Were those trees situated above, or below the bridge?

A. Below it.

Cross-Q. 157. To what part of the bridge was the chain attached?

A. Around one of the logs that—the stretchers, as you ones calls it.

Cross-Q. 158. Do you recollect which of the stretchers it was that the chain was attached to?

A. Yes, sir; on the Cumberland side, the lower one of the two, down the creek—those trees make part of the abutment.

Cross-Q. 159. What was the length of the chain from the trees to the point of attachment to the stretcher?

A. Oh, I couldn't just exactly tell, but the chain it was an ordinary log-chain—an ordinary log-chain is generally about twelve, fourteen feet long.

Cross-Q. 160. At what height from the ground was the chain attached to these trees, and in what manner was it attached there?

A. About eight feet from the ground up; and it was looped around the log, and then around the tree, and a hook on the end, and that was hooked into a link.

Cross-Q. 161. That was the way in which you secured part of the bridge when it was taken away by the ice flood of 1875, wasn't it?

A. Yes, sir.

Cross-Q. 162. Referring again to the time of the 1873 flood—at what distance from the shore end of the log, or stretcher, was the chain attached to that stretcher?

A. Oh, the log was quite close up to the tree—quite close.

Cross-Q. 163. Then, if I understand you, the log was right next to the tree which you say formed part of the abutment, and was secured to the tree in that position by means of a chain passed tight around the tree and around the log, at the height of about eight feet from the ground; is my understanding correct?

A. Yes, sir.

Cross-Q. 164. I suppose that, besides the abutment furnished by the tree, there is a post or upright on the Cumberland county shore, is there not?

A. Yes, sir; one post.

Cross-Q. 165. What was the position of that post when you and Mr. Shell went there to see?

A. Standing up.

Cross-Q. 166. Then, instead of none of the bridge being left standing, as you stated in your answer to cross-interrogatory No. 70, I understand you now to say that one of the piers in the stream and the post on the Cumberland county shore were left standing; which of these things do you wish to be understood as saying?

A. One of the piers and the post on the Cumberland side—the pier on the Cumberland side and the post on the Cumberland side—were left standing.

Cross-Q. 167. The bridge is approached on the Cumberland county side by means of wooden steps, is it not? And that was the case in 1873.

A. Yes, sir.

Cross-Q. 168. In 1873, to what part of the bridge were those wooden steps attached?

A. It was attached—it ran across from the top of the post, between the tree that stood against the bridge—that lay on top of the post, and a piece of timber spiked against the tree.

Cross-Q. 169. When you and Mr. Shell were there to see, had the steps been carried away or not?

A. No, sir.

Cross-Q. 170. So that instead of none of the bridge being left standing, a pier and a post and these steps were left standing, as I now understand you.

A. Yes, sir.

Cross-Q. 171. How high was the water the day that Mr. Shell and you were there to see the clover-mill bridge?

A. I couldn't just tell you exactly how high it was there at the bridge, but at my place I had a mark on a tree—measured it afterwards—eight and a half feet from low-water mark.

Cross-Q. 172. What supported the York county end of the bridge at that time?

A. The pier that the Almighty built—it was sot on the bank.

Cross Q. 173. How many of the logs or stretchers which the bridge contained were secured to the Cumberland county shore?

A. Three.

Cross-Q. 174. To which side of the bridge—the upper or the lower side—did these logs belong?

A. The two end ones on the Cumberland side, and the lower middle one. I mean when I say the lower middle one, the lower and the middle stretcher.

Cross-Q. 175. What kept the lower middle stretcher from floating away?

A. It was hooked together—what I call dog-ironed—with a hook at each end of the iron, and drove into the wood.

Cross-Q. 176. Do you mean that at that time the logs or stretchers of the bridge were connected together by iron staples?

A. Yes, sir. I always called them dog-irons.

Cross-Q. 177. If I correctly understand your testimony, three of the logs or stretchers of that bridge—each from thirty to forty feet long—were carried away at that time; did you see these stretchers, or any of them; and, if yes, where after the flood?

A. Didn't see them—none of the stretchers.

Cross Q. 178. How much of the flooring of that bridge did you see around there the day you and Mr. Shell went there?

A. Only on the first stretchers.

Cross-Q. 179. Then, if I understand you, the pier towards the York county shore, three of the logs or stretchers, and the flooring of the York county shore, and the middle span were gone; is that it?

A. Yes, sir.

Cross-Q. 180. You have been asked about Andrew Shell, and if he was supervisor in 1873. Was he ever supervisor; and, if yes, when?

[*Objected to as immaterial.*]

A. Yes, sir; I ain't positive whether it was in 1876 or 1877.

Cross-Q. 181. Did he die after, or during his term of office as supervisor?

A. The latter part of it; it wasn't quite finished up yet.

Cross-Q. 182. What time of year was it that he died?

A. In the spring—latter part of March or first of April; somewhere in that neighborhood.

Cross-Q. 183. You told us very positively the other day that Mr. Andrew Shell died in 1876—in the spring, as you now say; you also tell us that he died in the latter part of his term as supervisor; also, that he was supervisor in 1876 or 1877, you don't know which; now tell us what your recollection is as to Mr. Shell's being supervisor, and as to the time of his death.

A. 1876—I was just studying over it—in the following spring he died.

Cross-Q. 184. You now conclude, then, that he died in the spring of 1877, and that he was supervisor in 1876?

A. Yes, sir.

Cross-Q. 185. If I understand you, during his term as supervisor you were living in the district of which he was supervisor, and were, in fact, his near neighbor; is that correct?

A. Yes, sir.

Cross-Q. 186. Were you up with Mr. Shell at the clover-mill bridge at any time after the particular time to which you have testified, and before the bridge was repaired?

A. No, sir.

Cross-Q. 187. About what is the height of the stretchers of the clover-mill bridge above the ordinary level of the stream, and was the height the same in 1873?

A. Yes, sir; about nine feet above low-water mark. About the same; the one pier has always stayed in—never been out—not to my recollection.

Cross-Q. 188. The piers are supported upon wooden sills in the bed of the stream, are they not?

A. Yes, sir.

Cross-Q. 189. The pier which you saw at the head of the island at Hess's—was the sill attached when you saw it there or not?

A. No, sir; it was not.

Cross-Q. 190. About what is the width of the stream on the York county side opposite the island at Hess's?

A. It's not very wide there; probably not over about fifty, sixty feet.

Cross-Q. 191. Was the tree-top when you first saw it, inclined to the York county, or Cumberland county side of the stream, or did it lie straight up stream?

A. A little towards the Cumberland side; I mean the root of it—the back part of the tree—a little towards the Cumberland side.

Cross Q. 192. The root-part of the tree was considerably thicker, I suppose, than the part which had caught on the buttonwood tree?

A. Yes, sir; the root-part was thickest.

Cross-Q. 193. Was it, when you first saw it, lying pretty well cross-wise of the stream, or at considerable of an angle upward of the stream?

A. Pretty well along the same way of the island. A little toward the Cumberland shore; not very much. The island forms a small bend in the creek.

Cross-Q. 194. Was the root-end of the tree above, or below the head of the island?

A. Just about even, or maybe not quite; but pretty close—even with the island.

Cross-Q. 195. You have stated that in the summer of 1875 some of Ezekiel Worley's family cut a part of that tree-top away; I suppose you saw that done?

A. No, sir; I didn't see that done; I saw it after it was done. Mr. Worley had told me that they cut that stub off; that it had tore foot-bridges enough down.

[*All after the words "it was done" objected to as volunteered, irresponsive, and not evidence.*

Recess until 2, P. M.

2, P. M.

Examination of witness resumed.

Present, same counsel.

Cross-Q. 196. The Ezekiel Worley, referred to in the last question and answer, is a near neighbor of yours, and is the same Ezekiel Worley whom, in your answer to cross-interrogatory No. 45, you say you have had talk with about the flood and carrying away the clover-mill bridge?

A. Yes, sir; the same man.

Cross-Q. 197. The day you first went to see the bridge, as you have stated, what sort of weather was it?

A. Well, it was clear then—I don't just positively—can't tell you if it was clear or not—but it was not raining, I know. You mean the day that Shell and I went there?

Cross-Q. 198. It is your recollection, then, is it, that it did not rain any time that day?

A. Not the time that we went to the foot-bridge.

Cross-Q. 199. How near the bridge were you able to get at that time?

A. Well, we were there within—I may say we were pretty close up to it—we went there to the foot of the hill by way of boat—Zinn's hill, we call it.

Cross-Q 200. Whose boat?

A. It belonged to Zinn's clover-mill there—they used it there at the mill. I judge it belonged to Adam Zinn—the old man, Adam Henry's father—he owned the mill at that time.

Cross-Q. 201. Where did you find that boat that day?

A. At the foot of the hill, in the road. They used it there to take a little stuff of some contents from the mill when the water got up.

Cross-Q. 202. How far is the road, where it reaches the stream, from the mill buildings?

A. Why, not over about thirty yards, I guess.

Cross-Q. 203. And at this time, as I understand you, the boat was at the foot of the road, at a point thirty yards from the buildings; was it?

A. There's a mistake there; the road, I had understood, from the

mill—the public road—don't quite run up to about thirty yards of the mill; that's what I had understood; the point from where the boat was to the mill about seventy-five yards.

Cross-Q. 204. What I wish to know—and I can't quite yet clearly understand—is just where that boat was when you and Mr. Shell took it.

A. Right at the foot of the hill—right below Zinn's buildings—the building that he lived in—probably about fifty yards down over the hill; chained fast to the fence alongside the road.

Cross-Q. 205. Which side of the road—the side furthest away from or the side nearest to the bridge?

A. Why, the upper side; the side furthest away from it.

Cross-Q. 206. How far was that side of the road where the boat was tied, as you have said, from the steps of the bridge?

A. About sixty-five yards, or sixty—in that neighborhood; pretty nigh the same distance as it was from there to the mill; by the road, around by the mill, it would, of course, have been a little further, but measured straight, right through, it would have been about the same thing.

Cross-Q. 207. Was there any chain on the York county side of the bridge that day?

A. No, sir.

Cross-Q. 208. When did you next visit that bridge after this visit with Mr. Shell?

A. Why, I can't just exactly tell; it wasn't so very long afterwards; the first time, I think, I saw it afterwards after the water got low enough for a load of wood; I think that was the first time I saw it; then, afterwards, in Moser's woods—there's where I've been getting my wood since the first year I lived there—in 1873—and continue to do so to the present time.

Cross-Q. 209. I wish you would give me your best recollection of the length of time it was, after you had visited the bridge with Mr. Shell, that you went there for a load of wood?

A. I couldn't tell you exactly; it might have been a week—it might have been two weeks—or a day or two more than that; I couldn't tell exactly, but it wasn't such a great while.

Cross-Q. 210. Was this wood that you were going after fire-wood for use at your home?

[*Objected to as immaterial and irrelevant.*]

A. Yes, sir.

Cross-Q. 211. Was this before, or after you and your son-in-law had been up the bank of the creek collecting drift-wood, as you have stated?

A. Afterwards.

Cross-Q. 212. When next, after this trip for fire-wood, was it, according to your recollection, that you visited the clover-mill bridge?

A. What—I couldn't tell you on what business I was. It might have only been a few days; it might have been a week. I cross at the clover-mill bridge a good many times. In a year's time I cross at it pretty often—either at that fording or the one below it—there's a fording above the bridge and one below it, only about two hundred yards apart.

Cross-Q. 213. From your last answer, I understand that from 1873 to the present time you have had frequent occasion every year to cross the stream within sight of the bridge, and either above the bridge or below it; is that what you wish us to understand?

A. Yes, sir. Past the bridge there's a road running to either fording. It's no difference which you cross. The one road runs straight across as it comes down over Zinn's hill. The road turns at the foot-bridge, comes down on the Cumberland shore about two hundred yards, and then crosses.

Cross-Q. 214. What time of day was it when you and Mr. Shell went down to see the bridge?

A. About one o'clock; somewhere in that neighborhood; it wasn't before that—about one, or a little after that.

Cross-Q. 215. You have referred in your testimony to part of the foot-bridge being carried away from the spot where you tied it after the ice-flood of 1875 and being carried down to Comfort's bottom-land. Did you see that accident, or do you know just when it occurred?

A. I didn't see the logs lodge there; I only know that by hearsay. I heard them say that Comfort brought them back.

Cross-Q. 216. How frequently did you have occasion to notice the tree-top before, as you have stated, it came down opposite your place?

A. Oh, probably half a dozen times or so. It might have been a few times more; it might have been a few times less; I can't positively tell just exact.

Cross-Q. 217. Who, if any one, was with you on these occasions when you saw the tree-top after the particular occasion to which you have testified?

A. Mr. Martin once or twice; Abram Shell once, that I can mind of.

Cross-Q. 218. And the errand of Mr. Martin and Mr. Shell and yourself on these occasions was what?

A. First time was gathering drift-wood; second time, fishing, and the time Shell and I had went up we were fishing.

Cross-Q. 219. It has been your custom, has it, since you have been living in that neighborhood, to go to that place to fish with your friends and neighbors?

[*Objected to as irrelevant, immaterial, and a mere waste of time; and the further continuance of this line of examination objected to, because the matters inquired about have already been fully answered and exhausted.*]

A. Had been for the first few years I lived there—haven't fished any for the last three, four years—quit the business.

Cross-Q. 220. Is the clover-mill bridge in sight from the spot where it was your custom to fish while you were in that habit?

[*Same objections.*]

A. Yes, sir.

Cross-Q. 221. When was it, as you have stated, your son-in-law proposed to take this bridge-pier off for fire-wood, and you told him he had better let it alone?

[*Same objections.*]

A. When we were gathering drift-wood.

Cross-Q. 222. You have been questioned about doing work on the roads in 1873, while Mr. Bitner was supervisor; how many days of that sort of work did you do in that year?

A. Three days.

Cross-Q. 223. You are quite as positive about that, are you, as about anything else which you have testified to?

A. Yes, sir; I'm positive about that.

Cross-Q. 224. And those three days were all the work you charged against the supervisor or township that year, were they?

A. All the work I've done on the road, sir, or for the township

Cross-Q. 225. Was this three days' work done at one time, or at different times in the year; and was it all done at one spot or at different spots?

A. All done right after each other, and it was all done between Miller's mill and what's called Sheep-pen fording.

Cross-Q. 226. What time of year was it that you did that work?

A. I think about this time of the year.

Cross-Q. 227. It has been testified, by one or more of defendants' witnesses, that at a time after the ice-flood of 1875, the clover-mill bridge was blown over; do you recollect that, and will your memory serve you to tell us when it was?

[*Objected to as immaterial and irrelevant.*]

A. I mind of it being blown down, but whether it was right after the time it was put up after the ice-flood, or after that, I can't just exactly tell which it was.

Cross-Q. 228. In other words, as I understand you, your memory does not serve you to tell us if it was the first or second accident to the bridge after the ice-flood; is that what you mean?

A. Yes, sir.

Cross-Q. 229. I suppose you have no idea what year it was that the bridge was blown over?

A. No, that I can't tell—whether it was the first time after the ice-flood, or the next time after that, that it was blowed down.

Cross-Q. 230. Have you any recollection as to how long after the ice-flood it was that the bridge was down from any cause?

A. I guess in '76 it was down.

Cross-Q. 231. Have you any recollection as to how many times the bridge has been down between 1876 and the present time?

A. Twice, I guess; I ain't positive about it; when I ain't sure about a thing, I ain't going to say it positively.

Cross-Q. 232. Was it on the first, or second occasion of your being up to Moser's spring fishing with Mr. Martin, that you noticed the bridge timber had been taken from the tree top?

A. First time, I think.

Cross-Q. 233. How soon was that after you and he had been up there collecting drift-wood?

A. A week or two—maybe three weeks; it might have been a day or two longer; I'm not so positive about that.

Cross-Q. 234. Your answer is rather indefinite. Which of those periods of time do you think elapsed between the time you went to collect drift-wood and the first of these fishing excursions you speak of?

[*Objected to as calling for mere guess-work.*]

A. Why, when we went fishing, it was only four or five days after

the log had caught fast there when we went for drift-wood. What I mean is that four or five days after the log had caught fast, then we were gathering drift-wood, and some time after that we had went fishing.

Cross-Q. 235. Question repeated.

A. Well, the first time was only—was four or five days after; that's when the log stuck fast after the bridge had went away; and the first fishing might have been a week, two weeks, three weeks; I ain't so positive about that—it might have been only a week. And as regards the drift-wood, that was just shortly after the water had went down—very muddy along the creek.

Cross-Q. 236. Can you be any more definite or positive as to the time which intervened between the first and the second of these fishing excursions you have referred to?

[*Objected to because wholly irrelevant and immaterial, and because the subject has been fully gone over and exhausted, and the further continuance of this line of cross-examination protested against as a mere waste of time.*]

A. Not at present; no, sir.

Cross-Q. 237. Can you tell us whether it was before, or after these two fishing excursions, that you were up there with Abram Shell, as you have stated?

[*Objections and protest renewed.*]

A. Afterwards.

Cross-Q. 238. How long afterward?

[*Objections and protest renewed.*]

A. Oh, not a great while; couldn't tell you just exactly how long afterwards, but it wasn't such a great while.

Cross-Q. 239. What sort of weather were those fishing excursions made in?

[*Objections and protest renewed.*]

A. In drizzly, rainy weather.

Cross-Q. 240. How did you go up there—on foot or in a boat?

[*Objections and protest renewed.*]

A. On foot on the Cumberland shore till opposite Moser's spring; that was the place Abram Shell kept his boat.

Cross-Q. 241. You fished from Abram Shell's boat, then, on each of these occasions, did you?

[*Objections and protest renewed.*]

A. Yes, sir; we used that to go across the creek there by Moser's spring.

Cross-Q. 242. Is the Abram Shell to whom you have referred any relation to the Andrew Shell who has been mentioned in your testimony?

[*Objections and protest renewed.*]

A. Yes, sir; a son of his.

Cross-Q. 243. Was the excursion with Abram Shell before, or after the bridge had been repaired?

[*Objections and protest renewed.*]

A. Before.

Cross-Q. 244. You have referred to going to the bridge, on the day you visited it, with Mr. Andrew Shell in a boat: did you and he go in the boat anywhere else that day than to the bridge?

[*Objections and protest renewed.*]

A. Up to the old clover-mill, just a little above the bridge.

Cross-Q. 245. Anywhere else?

[*Objections and protest renewed.*]

A. No, sir.

Cross-Q. 246. On which of the excursions up the creek with your son-in-law was it that he proposed to take the bridge pier for firewood?

[*Objections and protest renewed.*]

A. We were gathering drift-wood; I've said that half a dozen times and more.

Cross-Q. 247. On which of the excursions was it that you noticed that the pier was no longer on the tree-top?

[*Objections and protest renewed.*]

A. The first time we went fishing; the other time it was laying on the bank.

Cross-Q. 248. You have referred to a buttonwood tree being placed in the stream in the channel between Hess's island and the Cumberland shore; when was that tree put there, do you know?

[*Objections and protest renewed.*]

A. It had been there when I first moved there; there was more than one—there was two or three in that channel.

Cross-Q. 249. Was the last of these fishing excursions which you recollect, being that with Abraham Shell, before or after the tree-top had been dislodged from the island and had come floating down to your place, as you have stated?

[*Objections and protest renewed.*]

A. It was when the tree-top was at the island when Shell was with me.

Cross-Q. 250. Do you remember how long after that excursion with Shell it was that the tree-top came floating down to your place?

[*Objections and protest renewed.*]

A. Can't tell just how long.

Cross-Q. 251. You told us the other day that you saw this tree-top at the island once only after the time when you and Mr. Martin were gathering drift-wood, and that that once was the first time you and Mr. Martin were up there fishing. If I now understand you, your recollection on that point has changed. How is that?

[*Objections and protest renewed and question further objected to because it misstates the testimony of the witness.*

In reply to which complainants' counsel refers to cross-question 143 and cross-question 144, also to cross-question 131.

Defendants' counsel calls attention to the fact that these references do not bear out the statement contained in the question now propounded.]

A. It was there when Mr Shell and I went up there yet. Him and I stood on the shore and talked about it. I'm satisfied about that.

Cross-Q. 252. How long after that was it, according to your present recollection, that this tree-top came floating down to your place?

[*Former objections and protest renewed.*]

A. It wasn't very long; for the whole length of time that it was fast there was only—maybe four, five, not over six weeks—the whole time.

Cross-Q. 253. You told us the other day that it rained a day or two after you and Mr. Martin were up there fishing, and that the tree-top then became loose from the buttonwood tree at the island, and floated down to your place; if I now understand you, your recollection has changed on that point; how is it?

[*Objections and protest renewed.*]

A. Well, it rained every time we were fishing; rained the day Shell and I was fishing; and, if my recollection's right, it was but a few days after Martin and I was up fishing, that Shell and I was—if I can think right.

Cross-Q. 254. Your recollection about the time which elapsed between the time you were there with Martin and your trip with Shell seems suddenly to have become a good deal more definite than it was when I asked cross-question 238; will your memory now serve you any better as to the time which elapsed between the first and second fishing excursions with your son-in-law?

[*Objections and protest renewed, and statement contained in the question further objected to as a mere attempt to badger and annoy the witness, there being no definite statement as to time, either in cross-answer No.* 238 *or cross-answer No.* 253, *and no discrepany between the two cross-answers.*]

A. The length of time I can't give any more definite than before—only it was there when Shell and I went up, for—because him and I talked about it; that I do mind.

Cross-Q. 255. Do you recollect distinctly having been at the island, or Moser's spring, or in the neighborhood of clover-mill bridge at any other time or times before the bridge was repaired, and after your trip with Mr. Shell to the bridge, than when you were on these fishing excursions with Mr. Martin and Mr. Shell?

[*Objections and protest to cross-question No* 236 *renewed.*]

A. One time I was along myself to the clover-mill—one time only I am certain I was there—after a little chop—one time certain—may have been more; they done a little chopping at the mill.

Cross-Q. 256. Have you been accustomed, while living in that neighborhood, to go to that mill for chop?

[*Objections and protest renewed.*]

A. For several years I had—first when I came there—of late years I haven't been there; been getting my grinding done at Miller's mill.

Cross-Q. 257. When you were fishing with Abram Shell at Moser's spring, was the pier still lying on the Cumberland shore, or had it been taken away?

[*Objections and protest renewed.*]

A. If my memory serves me right, it was right there when Shell and I talked together.

Cross-Q. 258. Can you tell us when next after that you saw it?

[*Objections and protest renewed.*]

A. To my recollection I didn't see it any more after that—not there, I don't think.

Cross-Q. 259. Who, if any one, was with you when you and Andrew Shell went to see the bridge?

[*Objections and protest renewed.*]

A. No one but Andy and I.

Cross-Q. 260. I understand you that none of the flooring on the middle span of the bridge was left on that occasion; was that the case?

[*Objections and protest renewed.*]

A. Yes, sir.

Cross-Q. 261. And that none of the wood-work on the York county side of the stream was left; is that so?

[*Objections and protest renewed.*]

A. Yes, sir.

Cross-Q. 262. To what extent did the wood-work that you say was fastened on the Cumberland side appear to be damaged or broken?

[*Objections and protest renewed.*]

A. There wasn't any of it broken that was left there—not to my recollection—I think all the stuff that stayed there was good yet.

Adjourned to 9, A. M., June 10, 1884.

JUNE 10, 1884, 9, A. M.

Examination of witness resumed.

Present, Mr. Howson for complainants, Mr. Melville Church and Mr. Jacobs for respondents.

Cross-Q. 263. You have referred to making fence posts for other parties in 1873. Has that been part of your business down to the present time?

[*Objected to as immaterial.*]

A. Yes, sir; besides my little bit of farming, I done some of that kind of business.

Cross-Q. 264. You have stated you went with Mr. Shell to the bridge the day the flood was. Was the rise of the waters that day sudden?

A. The biggest rise was in the forepart of the night. Hold on, when I said that I meant the afterpart, and in the morning.

Cross-Q. 265. About how high, do you recollect, was the water the day before the bridge went?

A. I can't tell that.

Cross-Q. 266. I understand you to say that within four or five days after the bridge was carried away the stream was only what you call bank full; is that correct?

A. Yes, sir.

Cross-Q. 267. Do you recollect how soon after the bridge was carried away the water had fallen to that stage?

A. Why, the water didn't stay up just so long; I don't suppose it was in my bottom over about a day.

Cross-Q. 268. Do you remember how soon after the ice-flood of 1875, as to which you were asked in your examination-in-chief, you had occasion to visit the site of the clover-mill bridge?

A. No; I can't tell you how soon.

Cross-Q. 269. Nor what your errand was?

A. Can't say.

Cross-Q. 270. Do you remember how soon after the bridge was blown down in 1876, as you think it was, that you had occasion to go up there?

[*Objected to as irrelevant, immaterial, and not proper cross-examination.*]

A. No; I can't tell just how soon—can't do that.

Cross-Q. 271. How much of the bridge was left by the ice-flood of 1875?

A. Well, I think there was only one span—the one I had chained fast—the rest was scattered along the creek.

Cross-Q. 272. Were any of the piers or posts left by that flood; and, if yes, which of them?

A. The one pier on the York county side—that's wrong; Cumberland, I mean—and the end-post on the Cumberland side there.

Cross-Q. 273. How much of the bridge was left when it went over in 1876, do you think?

A. That I can't tell; I can't tell anything about that. I don't think there was any of it went away, to my recollection of it.

Cross-Q. 274. The meaning of my question was, how much of the bridge, if you have any recollection of it, was left standing at that time?

[*This and the preceding question and answer objected to as irrelevant immaterial, and not proper cross-examination.*]

A. Can't tell anything about that at all.

Cross-Q. 275. Referring again to the 1873 flood—were you at home the day after you went up with Mr. Shell to see the bridge?

[*Objected to as immaterial and mere waste of time.*]

A. I ain't positive whether I was home all day or not—was home in the morning.

Cross-Q. 276. You have stated that your son in-law, George Martin, left your place in the spring of 1874; where did he go to at that time?

A. Moved to Barn. Staub's.

Cross-Q. 277. How long did he live there, do you know?

[*Objected to as irrelevant and immaterial.*]

A. Yes, sir; one year.

Cross-Q. 278. How far from your place was Mr. Staub's place at that time?

A. Probably about a mile, or a mile and a quarter.

Cross-Q. 279. I understand that the Andrew Shell whom you have named in your testimony was, in 1873, and down to the time of his death in 1877, living in Lower Allen township, Cumberland county; is that so?

A. Yes, sir; lived there ever since I knowed him.

Cross-Q. 280. The Abraham Shell mentioned in your testimony is dead, is he not?

A. Yes, sir.

Re-direct examination by Mr. Jacobs:

Q. Q. 281. How far down the creek on the York county side is Hess's island visible?

[*Objected to as not reëxamination.*]

A. Well, I think when you come down the creek—I ain't certain whether a fellow can see it—I think just about opposite my place there,

and that is about three hundred yards—two-fifty—in that neighborhood somewhere; it may probably be a little more—I can't just exactly tell.

[*Objected to as not evidence.*]

Q. Q. 282. Do you know the place where Christian Hess and those who occupy his farm along the creek were accustomed to water their horses?

[*Objected to as not reëxamination and as immaterial.*]

A. Yes, sir.

Q. Q. 283. Can the island be seen from there?

[*Same objection, and as leading.*]

A. Yes, sir.

Q. Q. 284. Judging from the position in which you saw the tree-top at the head of Hess's island, could or could not it be seen from that watering-place?

[*Same objections, and also as calling for mere matter of opinion, not fact.*]

A. Yes, sir, it could.

Q. Q. 285. In your answer to cross-question No. 84, you are recorded as saying that the three logs which were chained to the Cumberland side in 1873 belonged to the York county side of the bridge; you subsequently testified that two of those logs belonged to the Cumberland side, and one of them to the middle span of the bridge; will you please explain the apparent discrepancy between those two statements?

[*Objected to as incompetent; the testimony speaks for itself.*]

A. If I said York county it was wrong; I meant Cumberland county at the time; if I said York county I was wrong.

Q. Q. 286. Will you tell us something about the elevation of the banks of the creek on the two sides between the clover-mill and a point on the creek down as low as your house?

[*Objected to as not reëxamination.*]

A. York county side first: The bank just right at the foot-bridge is very high—probably twenty-five feet; then it runs on down pretty much the same—that height—to Hess's watering-place; then from the watering-place on down it might average—run between four, five, six feet above low-water mark. Cumberland side: That runs about be-

Cross-Q. 274. The meaning of my question was, how much of the bridge, if you have any recollection of it, was left standing at that time?

[*This and the preceding question and answer objected to as irrelevant immaterial, and not proper cross-examination.*]

A. Can't tell anything about that at all.

Cross-Q. 275. Referring again to the 1873 flood—were you at home the day after you went up with Mr. Shell to see the bridge?

[*Objected to as immaterial and mere waste of time.*]

A. I ain't positive whether I was home all day or not—was home in the morning.

Cross-Q. 276. You have stated that your son in-law, George Martin, left your place in the spring of 1874; where did he go to at that time?

A. Moved to Barn. Staub's.

Cross-Q. 277. How long did he live there, do you know?

[*Objected to as irrelevant and immaterial.*]

A. Yes, sir; one year.

Cross-Q. 278. How far from your place was Mr. Staub's place at that time?

A. Probably about a mile, or a mile and a quarter.

Cross-Q. 279. I understand that the Andrew Shell whom you have named in your testimony was, in 1873, and down to the time of his death in 1877, living in Lower Allen township, Cumberland county; is that so?

A. Yes, sir; lived there ever since I knowed him.

Cross-Q. 280. The Abraham Shell mentioned in your testimony is dead, is he not?

A. Yes, sir.

Re-direct examination by Mr. Jacobs:

Q. Q. 281. How far down the creek on the York county side is Hess's island visible?

[*Objected to as not reëxamination.*]

A. Well, I think when you come down the creek—I ain't certain whether a fellow can see it—I think just about opposite my place there,

and that is about three hundred yards—two-fifty—in that neighborhood somewhere; it may probably be a little more—I can't just exactly tell.

[*Objected to as not evidence.*]

Q. Q. 282. Do you know the place where Christian Hess and those who occupy his farm along the creek were accustomed to water their horses?

[*Objected to as not reëxamination and as immaterial.*]

A. Yes, sir.

Q. Q. 283. Can the island be seen from there?

[*Same objection, and as leading.*]

A. Yes, sir.

Q. Q. 284. Judging from the position in which you saw the tree-top at the head of Hess's island, could or could not it be seen from that watering-place?

[***Same objections, and also as calling for mere matter of opinion, not fact.***]

A. Yes, sir, it could.

Q. Q. 285. In your answer to cross-question No. 84, you are recorded as saying that the three logs which were chained to the Cumberland side in 1873 belonged to the York county side of the bridge; you subsequently testified that two of those logs belonged to the Cumberland side, and one of them to the middle span of the bridge; will you please explain the apparent discrepancy between those two statements?

[*Objected to as incompetent; the testimony speaks for itself.*]

A. If I said York county it was wrong; I meant Cumberland county at the time; if I said York county I was wrong.

Q. Q. 286. Will you tell us something about the elevation of the banks of the creek on the two sides between the clover-mill and a point on the creek down as low as your house?

[*Objected to as not reëxamination.*]

A. York county side first: The bank just right at the foot-bridge is very high—probably twenty-five feet; then it runs on down pretty much the same—that height—to Hess's watering-place; then from the watering-place on down it might average—run between four, five, six feet above low-water mark. Cumberland side: That runs about be-

tween four, five, and six feet there pretty much all the way along; the Cumberland side is, on an average, a pretty level grade.

Deposition taken and reduced to writing by me, and by the witness affirmed to and subscribed in my presence this, 10th day of June, A. D. 1884.

PAUL CHARLTON,
Notary Public, Special Examiner.

SAMUEL M. DECKMAN.

FRANCIS S. STRASBAUGH, *being produced and affirmed, upon examination saith:*

I live at Marysville, Perry county, Pennsylvania; am twenty-three years old; am a clerk.

Examined by Mr. Melville Church:

Q. 1. A witness was called by the complainants, in Philadelphia, last April, and testified that his name was William Ross, and that he formerly lived in Marysville. On cross-examination, he said his true name was Forkinross, and that he was called Ross for short. (See complainants' printed rejoinder, pp. 1811–1831, inclusive). Do you know the person referred to; and if so, how long have you known him?

A. I know him, and have known him for eight years.

Q. 2. State whether or not he is known in and about Marysville by any other name than Wm. Ross or Wm. Forkinross?

[*Objected to as incompetent and immaterial.*]

A. Yes, sir, he is; he is known by a nick-name, as you may call it.

Q. 3. By what nick-name is he called?

[*Same objection.*]

A. "Chicken Ross."

[*Deposition objected to as incompetent, immaterial, and trifling, and cross-examination declined.*]

Deposition taken and reduced to writing by me, and by the witness affirmed to and subscribed in my presence this 10th day of June, 1884.

PAUL CHARLTON,
Notary Public, Special Examiner.

FRANCIS S. STRASBAUGH.

EPHRAIM P. BRENNEMAN, *being produced and affirmed, upon examination saith:*

Examined by Mr. Melville Church:

I live at Marysville, Perry county, Penna.; am twenty-three years old; am a barber and watch repairer.

Q. 1. A witness was called by the complainants [see complainants' printed rejoinder, pp. 1811–1831, inclusive,] who gave his name as William Ross, and testified that he formerly lived at Marysville, and that his true name was Forkinross, though called Ross for short; do you know the person referred to; and, if so, how long have you known him?

A. Yes, sir. Well, I've known him about two years and a half.

Q. 2. State whether or not he is known in and about Marysville by any other name than William Ross, or William Forkinross; and, if yes, state by what other name he is known.

[*Objected to as immaterial, and also because it is not competent for defendants to undertake to contradict the testimony of the witness Ross himself, extracted from him upon cross-examination, as to the subject now being inquired of.*]

A. "Chicken Ross."

[*Same objections as to deposition of Francis S. Strasbaugh, and cross-examination declined.*]

Deposition taken and reduced to writing by me, and by the witness affirmed to and subscribed in my presence this 10th day of June, 1884.

PAUL CHARLTON,
Notary Public, Special Examiner.

E. P. BRENNEMAN.

AARON H. CORL, *being produced and sworn, upon examination, saith:*

I live at Marysville, Perry county; am twenty-four years old; laborer; have lived at Marysville since August 10, 1865.

Examined by Mr. Melville Church:

Q. 1. A witness was called by complainants, (see complainants' printed rejoinder, pp. 1811-1831, inclusive,) who gave his name as William Ross, and testified that he formerly lived at Marysville, and that his true name was Forkinross, though called Ross for short. Do you know the person referred to; and if so, how long have you known him?

A. I know him. I have knowed him, as near as I can tell, about twelve years.

Q. 2. State whether or not he is known in and about Marysville by any other name than William Ross or William Forkinross; and if yes, by what other name is he known?

[*Same objection as to question 2 in deposition of E. P. Brenneman, taken this day.*]

A. By the name of "Chicken."

[*Same objections as to the depositions of Francis S. Strasbaugh and E. P. Brenneman, taken this day.*]

Deposition taken and reduced to writing by me, and by the witness sworn to and subscribed in my presence, this 10th day of June, 1884.

PAUL CHARLTON,
Special Examiner, Notary Public.

A. H. CORL.

FRANCIS ALONZO GIVEN, *being produced and sworn, upon examination saith:*

Live in Volga, Dakota; claim residence in Hand county, Dakota; about thirty years old; working for the railroad company out there, and have some land that I'm working, too.

Examined by Mr. Melville Church:

Q. 1. Did you ever live in Marysville, Perry county, Pennsylvania?

A. Yes, sir.

Q. 2. When did you go to live at Marysville?

A. It was in December or perhaps—I can't tell you exact; it appears to me it was December 2, 1875. It was in December, 1875. It was either in the latter part of November or the early part of December; not later than the second of December; I can't tell you exact, but not later than that.

Q. 3. How long did you live in Marysville?

A. Two years.

Q. 4. What were you at work on while you lived there?

A. I was telegraph operator for the Pennsylvania Railroad Company.

Q. 5. With whom did you board?

A. With Mr. David Geib, the station agent there.

Q. 6. When did you move away from Marysville, and where did you go to?

A. I went away from there about the third or fourth—the third, perhaps, of December, 1877, and went to Philadelphia from there.

Q. 7. How long were you in Philadelphia, and where did you go next?

A. I was there about a day; I left Philadelphia the evening of the fifth of December; that was in 1877, the same year; my destination was Huston, Texas.

Q. 8 From Houston, Texas, where did you go?

A. I came north to Corsicana, Texas.

Q. 9. How long did you stop at Corsicana?

A. I was employed on the road thereabouts until I came north.

Q. 10. When did you go north, and where did you locate?

A. I started from Corsicana the 19th day of March, 1878, and I got a situation on the Chicago, Burlington and Quincy railroad. The first station I worked was Prescott, Iowa.

Q. 11. From Prescott where did you go and locate?

[*This line of examination objected to as immaterial and irrelevant.*]

A. The next station that I worked at was Cromwell, Iowa.

Q. 12. Name the various places you worked at after that.

A. Pacific Junction, Iowa; Hastings, Iowa; Sidney, Iowa; Randolph, Iowa; Macedonia, Iowa; Glenwood, Iowa; Emerson, Iowa; Red Oak, Iowa; Griswold, Iowa; Fontanelle, Iowa; Creston, Iowa.

Q. 13. How long did you work at Creston?

A. Off and on for about a year.

Q. 14. Where then did you go?

A. Well, let me state here that the last station on the road where I worked was not Creston; it was Sidney, Iowa.

Q. 15. From Sidney where did you go?

A. I quit work for that company—the C., B. & Q. R. R.—about April 1, 1883. To Red Oak, Iowa, I went from Sidney.

Q. 16. When did you go to Dakota, and what did you do there?

A. In April, 1883, my brother, William Given, and I took up Government land in Hand county, Dakota.

Q. 17. When did you move to the place where you are now located?

A. July 10, 1883.

Q. 18. What are you at present working at?

A. Telegraph operator for the Dakota Central railroad.

Q. 19. A controversy has arisen in this case in regard to a certain hydraulic ram on the farm formerly belonging to Thomas Draper, which lies just back of the village of Marysville, and which, for a number of years, was occupied by Mr. George W. Kissinger; state whether or not you have any knowledge as to the existence of such a ram at that place; and, if yes, state when, and how, and under what circumstances you derived such knowledge?

[*Objected to as leading in form, also as incompetent at this stage of the case; the last objection to apply to all succeeding inquiries in regard to the matter inquired of in this question.*]

A. Yes, sir; I have knowledge of a ram there. I was in company with George Kreidler taking a walk. We walked in the direction of Kreidler's farm; I mean not Kreidler's farm but the Kissinger place, as I knowed it by; and, in our walk, we saw this hydraulic ram—we saw a hydraulic ram. I wouldn't be positive as to the date, but think it was '76.

Q. 20. Do you remember on what day of the week it was that you and Kreidler took this walk and saw a ram, as you have testified?

A. My recollection is that it was Sunday.

Q. 21. Do you remember on what part of the Kissinger farm that ram which you saw was located?

A. It was not far from the house.

Q. 22. In which direction from the house was it?

A. My recollections of where the house stood and where the ram was—I would call it in a—well, just here I would like to ask which way north and south stands—

Q. 23. If you don't know the points of the compass, will you please state which side of Mr. Kissinger's house faced towards the ram, according to your recollection?

[*Objected to as assuming.*]

A. I don't understand the question.

Q. 24. Please describe, as best you can, the location of the ram that you saw, with respect to the buildings or other objects on the Kissinger farm.

[*Objected to, it not having been made to appear that the witness has any recollection of the buildings or other objects on the Kissinger farm.*]

A. I would call it in a south-westerly direction from the house.

Q. 25. Which way, according to your recollection, does the house face?

A. I'm not positive, but think south.

Q. 26. Whereabouts on the farm was this ram located? Describe the character of the surface about its point of location, if you remember.

[*Objected to, the subject having been already exhausted in the preceding questions and answers, so far as this witness' recollections are concerned.*]

A. It was in a deep ravine that run down between the school-house and this Kissinger house.

Q. 27. State whether or not the ram was in operation when you saw it, on the occasion of this visit to it with Kreidler.

A. I would say it was, as the piston, or valve, or whatever you call it, was working.

Q. 28. What was the appearance of the place where the ram stood?

A. It was in a hole in the ground. Around the hole there was some rubbage of one kind and another, if I recollect right. The ground was sloped back from the edge of the hole, high around the edge of the hole, and sloped back. That's my recollections of it.

Q. 29. Where were you living when you and Kreidler saw this ram?

A. Marysville.

Q. 30. After you left for the West, in December, '77, when, if ever, did you next come East again?

A. In April, '82.

Q. 31. Where were you working when you came East in April, '82?

A. Griswold, Iowa.

Q. 32. How long were you East, and what did you come for?

A. About six weeks—came on a visit.

Q. 33. Did you go to Marysville while on your visit East in 1882?

A. Yes, sir.

Q. 34. How long were you there, and with whom, if anyone, did you stop?

A. I was there from about nine o'clock in the morning until about five o'clock in the evening of the same day; I stopped with Samuel Geib.

Q. 35. Is Samuel Geib any relation to David Geib, with whom you boarded when you lived in Marysville, and if yes, what relation is he?

A. Son of David Geib's.

Q. 36. When you were in Marysville in 1882, did you go up to the place where Kissinger lived when you were in Marysville in 1876–7?

A. No, sir.

Q. 37. Did you see any hydraulic ram while you were in Marysville in 1882?

A. No, sir.

Q. 38. Did you see or meet George Kreidler while you were in Marysville in 1882?

A. No, sir; I have no recollection of meeting him; I am pretty sure I didn't see him.

Q. 39. When, to the best of your recollection, did you last see George Kreidler?

A. Not for some time before I left Marysville in 1877.

Q. 40. When were you last at the Kissinger place, where you saw the ram, in company with George Kreidler, as you have testified?

A. I never was there but the once.

[*Deposition objected to as incompetent.*]

Recess till 2.30, P. M.

2.30, P. M.

Examination of witness resumed.

Cross-examined by Mr. Howson, de bene esse:

Cross-Q. 41. When did you leave Dakota to come and testify here?

A. [*Witness referring to memorandum, replies:*] Fifth day of this month—fifth day of June.

Cross-Q. 42. When did you receive notice to come here?

A. I started from there the fifth day of June, at 12.30, I think it was, P. M. Knew nothing about coming until—oh, well, about nine or ten o'clock of the same day I started.

Cross-Q. 43. In what manner did you receive notice at the time you have stated?

A. Through Mr. Dixon personally.

Cross-Q. 44. And that, you say, was on the same day you started?

A. Yes, sir.

Cross-Q. 45. Who and what did Mr. Dixon tell you he was, if he told you anything on the subject?

A. Mr. Dixon told me nothing about the subject; only that I was wanted here as a witness.

Cross-Q. 46. That was all that passed between you and him, was it?

A. I was wanted here as a witness about seeing this ram, was all that was said to me about the case.

Cross-Q. 47. Did Mr. Dixon tell you how, or through whom, he had obtained your name and address?

A. He received his information through, or from, Mr. Hill.

Cross-Q. 48. Was this visit of Mr. Dixon the first occasion upon which you had heard anything of this case?

A. Yes, sir.

Cross-Q. 49. Was it the first time that you had been asked whether you recollected anything about the ram on the Kissinger farm?

A. Yes, sir.

Cross-Q. 50. Did Mr. Dixon tell you what Mr. Hill was or is?

A. No, sir; he did not.

Cross-Q. 51. How long was Mr. Dixon with you that day?

A. Mr. Dixon was with me all that day. We took the train and come to Chicago together.

Cross-Q. 52. When he saw you in the morning, did he give you to understand that he had just come from Chicago?

A. I don't know as he told me where he was from—what particular place.

Cross-Q. 53. What is the length of the journey from your residence in Dakota to Chicago?

A. The time it takes to go from where I started to Chicago is from 12.30, P. M., of one day to 7, P. M., of the next day.

Cross-Q. 54. During this day and a half's journey with Mr. Dixon, had you and he any talk at all about this matter of the ram at the Kissinger farm, or wasn't the subject mentioned?

A. The subject wasn't mentioned or talked of in any way that I have any recollection of.

Cross-Q. 55. And do you give the same answer as to the time in the morning before you took the train for Chicago?

A. He told me that I was wanted here as a witness about this ram.

Cross-Q. 56. And that, as I understand you, was the first time this subject of the ram had been mentioned to you in any way by any person since the time in '77 when you left Marysville; is that the way in which you wish to be understood?

A. It is the first time that it ever was mentioned to me by anybody, except what talk we may have had when we saw it—the day we saw it.

Cross-Q. 57. How long were you in Chicago on your way here?

A. From 7 o'clock, P. M., until 11.30 o'clock, P. M.

Cross-Q. 58. Where were you during that time, and with whom, if with any one?

A. Mr. Dixon and I went and got our supper. He went up to his office for something; I don't know what. I went along with him. He went with me to the depot. I purchased my tickets to Harrisburg. I walked back—up street—with him a ways, and he left me—said he was going home. Was with nobody else while in Chicago.

Cross-Q. 59. And I suppose you and he had no talk at all during the course of that evening in reference to this ram.

A. I know we hadn't.

Cross-Q. 60. So that what you wish us to understand is that there was no talk whatever between you and Mr. Dixon on that subject beyond his telling you at your place in Dakota that you were wanted here to testify as a witness about seeing this ram; is that it?

A. That's what I want you to understand.

Cross-Q. 61. And, that, thereupon, he brought you to Chicago and sent you forward here without informing you or your asking who or what he was, or what the case was in which your testimony was wanted; is that correct?

[*Objected to as an unwarranted assumption.*]

A. There was nothing said about the case further than what he told me before we started.

Cross-Q. 62. What was it he told you before you started?

A. That I was wanted here as a witness about this ram.

Cross-Q. 63. When did you arrive at Harrisburg?

A. Sunday morning between four and five o'clock.

Cross-Q. 64. Where did you spend Sunday?

A. With my brother in Harrisburg.

Cross-Q. 65. What is your brother's business, and where in Harrisburg does he live?

A. He is a fireman on the Pennsylvania Central road between Harrisburg and Philadelphia; he lives at 1985 Pennsylvania avenue.

Cross-Q. 66. Did you see anybody connected with this case on Sunday? and if yes, whom?

A. No, sir; I saw no one.

Cross-Q. 67. Where were you yesterday?

A. I was down town here some time in the forenoon; also in the afternoon, and in the evening.

Cross-Q. 68. Down town where—at what place or places?

A. I just can't remember every particular place I was at—down at the depot, up around the capitol grounds, and various other places.

Cross-Q. 69. Did you see any one connected with this case yesterday?

A. I saw Mr. Church.

Cross-Q. 70. Where and when was it that you saw Mr. Church?

A. In his office in the forenoon—Mr. Jacobs' office.

Cross-Q. 71. How long were you and Mr. Church together then?

A. I was in the office there with Mr. Church, I should judge, fifteen minutes—perhaps twenty: can't say as to the time.

Cross-Q. 72. Who else, if you know, was in the office while you were there with Mr. Church?

A. Mr. Jacobs was there—there were other parties I don't know.

Cross-Q. 73. I suppose you have met none of your old Marysville friends or acquaintances since your arrival here on Sunday morning?

A. I met Mr. Miller, an acquaintance of mine; young Mr. Strasbaugh—that was all I have met from Marysville since I've been in the State.

Cross-Q. 74. When and where was it you met these gentlemen, and were they together?

A. I met them yesterday forenoon—Mr. Miller and Mr. Strasbaugh was together when I met them—in the hallway in the building that Mr. Jacobs' office is in.

Cross-Q. 75. Did Mr. Miller tell you what his business is just now, or what he was doing there?

A. There was nothing said about what business he was in, or what he was doing.

Cross-Q. 76. What was this Mr. Miller's business at the time you knew him in Marysville?

A. He was hauling around town. I don't remember what other business he was engaged in, or whether he was in any other business.

Cross-Q. 77. Have you seen Mr. Miller and Mr. Strasbaugh, or either of them, since yesterday morning; and if yes, when and where?

A. Saw them yesterday afternoon on the street, and in the hallway of this building that I mentioned before.

Cross-Q. 78. A witness named Oliver H. Miller testified for defendants in this case, (see pp. 577–581, printed sur-rebuttal,) and gave his occupation as that of painting last summer—said he used to farm, and have a team, and haul around Marysville, and at one time had been con-

Cross-Q. 94. What other places besides the farm, which you have called the Kissinger farm, did you and he visit together that day?

A. I don't recollect; I think we was at the school-house.

Cross-Q. 95. How far is that school-house from Mr. Geib's, where you boarded?

A. I can't say as to the distance; maybe a half or three quarters of a mile; I couldn't say.

Cross-Q. 96. How near was the farm which you call the Kissinger farm to this school-house, according to your recollection?

A. Not a great ways; it stands on a hill on what I would call north from the school-house; the Kissinger house can be seen very plainly from the school-house.

Cross-Q. 97. I wish you would be a little more definite in giving me the distance between the two places, if you recollect that distance.

A. It would be hard for me to give you the exact distance; it's been some time since I've been there.

Cross-Q. 98. I didn't ask you for the exact distance, but simply for your best recollection of it as you observed it the day you and your friend took that walk—as you can now recollect it.

A. There's a deep ravine runs between the school-house and the Kissinger house, and I couldn't tell you the distance a man would have to travel from the school-house to the house on the Kissinger farm.

Cross-Q. 99. Do you mean that the Kissinger house is on one side of a ravine and the school-house on the other?

A. Yes, sir.

Cross-Q. 100. Which did you visit first that day—the Kissinger house or the school-house?

A. I have no recollection of being right up to the Kissinger house that day.

Cross-Q. 101. Do you wish us to understand that you saw a ram that day, or that you saw the place where a ram was; which is your meaning?

A. I saw the ram that day.

Cross-Q. 102. You have said that the ram was in a hole in the ground; how deep was that hole, and what was there, if anything, to prevent the displacement or caving in of the earth, according to your present recollection?

A. The depth of the hole I couldn't say; I didn't measure it; if I recollect right, there was some boards put up to keep it from caving in.

Cross-Q. 103. According to your present recollection, how high did these boards extend above the level of the top of the pit, if at all?

A. Didn't extend up at all, according to my recollection, above the level of the top of the pit or hole, as you may call it.

Cross-Q. 104. If I understand you, that ram was placed in this hole in the ground, exposed to the view of passers-by; is that what you mean?

A. The ram was down in this hole; any one could see it that would walk up to the hole and look in.

Cross-Q. 105. How far below the top of the pit was the top of the ram, as you recollect?

[*Objected to, as witness has not stated that the top of the ram was below the top of the pit at all.*

Objection objected to as a deliberate prompting of the witness.]

A. I don't remember.

Re-direct examination by Mr. Church:

Q. Q. 106. Did Mr. Dixon give any reason for not talking more to you about this ram matter?

[*Objected to as incompetent and immaterial.*]

A. He told me he didn't want to say anything to me about it; he wanted me to go entirely on my own recollections.

Q. Q. 107. After Mr. Church had talked with you about the ram, what instructions did he give you in regard to your conduct before being examined as a witness?

[*Same objections.*]

A. He told me to say nothing about it to anybody.

Q. Q. 108. State whether or not any mention was made of going to Marysville, or up to the Kissinger farm; and if so, what was said?

[*Same objections.*]

A. I spoke something of going up there myself—was told that they didn't want me to go, as they wanted it as I recollected it, without any refreshing my memory.

Q. Q. 109. Will you please state what kind of a roof that school-house about which you have testified had on it—what form of roof?

A. I don't know as I can tell the form of the roof.

[*Complainants' counsel further objects to the foregoing deposition, that*

Cross-Q. 94. What other places besides the farm, which you have called the Kissinger farm, did you and he visit together that day?

A. I don't recollect; I think we was at the school-house.

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A. I can't say as to the distance; maybe a half or three quarters of a mile; I couldn't say.

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A. It would be hard for me to give you the exact distance; it's been some time since I've been there.

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A. There's a deep ravine runs between the school-house and the Kissinger house, and I couldn't tell you the distance a man would have to travel from the school-house to the house on the Kissinger farm.

Cross-Q. 99. Do you mean that the Kissinger house is on one side of a ravine and the school-house on the other?

A. Yes, sir.

Cross-Q. 100. Which did you visit first that day—the Kissinger house or the school-house?

A. I have no recollection of being right up to the Kissinger house that day.

Cross-Q. 101. Do you wish us to understand that you saw a ram that day, or that you saw the place where a ram was; which is your meaning?

A. I saw the ram that day.

Cross-Q. 102. You have said that the ram was in a hole in the ground; how deep was that hole, and what was there, if anything, to prevent the displacement or caving in of the earth, according to your present recollection?

A. The depth of the hole I couldn't say; I didn't measure it; if I recollect right, there was some boards put up to keep it from caving in.

Cross-Q. 103. According to your present recollection, how high did these boards extend above the level of the top of the pit, if at all?

A. Didn't extend up at all, according to my recollection, above the level of the top of the pit or hole, as you may call it.

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A. The ram was down in this hole; any one could see it that would walk up to the hole and look in.

Cross-Q. 105. How far below the top of the pit was the top of the ram, as you recollect?

[***Objected to, as witness has not stated that the top of the ram was below the top of the pit at all.***

Objection objected to as a deliberate prompting of the witness.]

A. I don't remember.

Re-direct examination by Mr. Church:

Q. Q. 106. Did Mr. Dixon give any reason for not talking more to you about this ram matter?

[*Objected to as incompetent and immaterial.*]

A. He told me he didn't want to say anything to me about it; he wanted me to go entirely on my own recollections.

Q. Q. 107. After Mr. Church had talked with you about the ram, what instructions did he give you in regard to your conduct before being examined as a witness?

[*Same objections.*]

A. He told me to say nothing about it to anybody.

Q. Q. 108. State whether or not any mention was made of going to Marysville, or up to the Kissinger farm; and if so, what was said?

[*Same objections.*]

A. I spoke something of going up there myself—was told that they didn't want me to go, as they wanted it as I recollected it, without any refreshing my memory.

Q. Q. 109. Will you please state what kind of a roof that school-house about which you have testified had on it—what form of roof?

A. I don't know as I can tell the form of the roof.

[***Complainants' counsel further objects to the foregoing deposition, that***

it is incompetent for the defendants' counsel to contradict their own witnesses whose testimony was taken in so-called sur-rebuttal of complainants' rebuttal.]

Deposition taken, reduced to writing, and by the witness sworn and subscribed to before me, this 10th day of June, 1884.

PAUL CHARLTON,
Notary Public, Special Examiner.

F. A. GIVEN.

[*Counsel for defendants offer in evidence the following certificates, and request that the same be spread upon the record and marked by the Examiner,*

Defendants' exhibits "Given Assessment List" and "Given Voting List", respectively.

Objected to as not competent evidence for any purpose in this case, and as immaterial, there being nothing whatever to show who or what the F. A. Given referred to in certificates is or was, and furthermore, that the so-called certificates are not such as are provided or authorized by law, or such as the law makes evidence for any purpose.

Paper marked "Given Assessment List" copied by Examiner as follows:

"Commissioner's Office, New Bloomfield, Perry Co., Pa.

This is to certify that it appears from the "Annual Assessment Lists" for the Borough of Marysville, Perry Co., Pa., that F. A. Given was rated as a taxable citizen of said borough of Marysville in the years 1876 and 1877; further, that in the "Assessment Lists" for said Borough for the years 1878 to 1884, inclusive, the said F. A. Given was not rated as a taxable citizen of said Borough. It is hereby further certified that the return of the Assessor for the year 1877 was made on or prior to the 8th day of May of that year.

Witness my hand and the Seal of the Commissioner's Office of Perry Co., Pa., this 27th day of May, 1884.

C. W. RHINESMITH, *Clerk.*

Seal of Commissioner's Office, Perry Co., Pa."]

Paper marked "Given Voting List" copied by Examiner as follows:

"State Pennsylvania }
County of Perry, S. S. }

I, A. B. Grosh, Prothonotary of the Court of Common Pleas of Perry County aforesaid do hereby certify that I have examined the "list of voters who voted in Marysville borough Perry Co., Penna., November election, 1877," (which list is on file in said court) and find the name of

F. A. Givens on said list to No. 30 and also that I have examined the "List of voters who voted in Marysville borough, Perry Co. Penna., November election 1878 and *do not* find the name of F. A. Givens on said list.

Seal of the Court of Common Pleas of Perry Co., Pa.

In Testimony whereof I hereunto set my hand and affix the Seal of said Court at Bloomfield this 27th day of May, 1884.

A. B. Grosh,
Prothonotary.

I Chas. A. Barnett, President Judge of the forty-first Judicial District, composed of the counties of Juniata and Perry, do certify that A. B. Grosh, by whom the annexed record, certificate and attestation were made and given, and who in his own proper handwriting thereunto subscribed his name and affixed the Seal of the Court of Common Pleas of said County was at the time of so doing and now is prothonotary in and for said county of Perry in the Commonwealth of Pennsylvania duly commissioned and qualified, to all of whose acts as such full faith and credit are and ought to be given as well in Courts of judicature as elsewhere, and that the said record, certificate and attestation are in due form of law, and made by the proper officer.

Charles A. Barnett,
President Judge.

Commonwealth of Pennsylvania }
County of Perry, SS. }

I A. B. Grosh, Prothonotary of the Court of Common Pleas in and for said county, do certify that the Honorable Charles A. Barnett, by whom the foregoing attestation was made, and who has thereunto subscribed his name was at the time of making thereof and still is President Judge of the Court of Common Pleas, Orphans' Court and Court of Quarter Sessions of the Peace in and for said county, duly commissioned and qualified; to all whose acts as such full faith and credit are and ought to be given, as well in Courts of Judicature or elsewhere.

Seal of the Court of Common Pleas of Perry Co., Pa.

In Testimony Whereof, I have hereunto set my hand and affixed the Seal of said Court, this twenty-seventh day of May, A. D., 1884.

A. B. Grosh,
Prothonotary.]

Adjourned until June 11, 1884, at 10, A. M.

JUNE 11, 1884, 10, A. M.

Resumed, pursuant to adjournment.

Present, Mr. Howson for complainants, and Mr. Jacobs and Mr. Melville Church for respondents.

GEORGE W. KREIDLER, *being produced and affirmed, upon examination saith:*

I live at Marysville, Perry county, Pennsylvania; my age is thirty-nine years; am a tinsmith.

130 TESTIMONY FOR RESPONDENTS IN SUR-REJOINDER.

Examined by Mr. Melville Church:

Q. 1. When did you go to Marysville to live?

A. August 22, '76.

Q. 2. What were you working at there?

A. I was working at tinsmithing.

Q. 3. Were you employed by any one, or were you working for yourself?

A. I was employed by the Northern Central Railroad Company.

Q. 4. Who was your boss?

A. Mr. John S. Funk.

Q. 5. State whether or not you have been living continuously at Marysville since you went there in 1876, as you have testified.

A. I have been living there continuously since.

Q. 6. Are you working for the railroad company now?

A. No, sir.

Q. 7. State whether or not you know Francis Alonzo Given; and, if so, how long have you known him, and when and where did you become first acquainted with him?

A. I knew Mr. Givens; I think it was in the year '75 I became acquainted with Mr. Givens in Marysville.

Q. 8. What was Mr. Given's business when you first became acquainted with him?

A. Mr. Givens was employed by the Pennsylvania Railroad Company as an operator—a telegraph operator.

Q. 9. It has appeared in evidence in this case that there is a certain farm located just back of the village of Marysville, formerly owned by Mr. Thomas Draper, and at one time occupied by Mr. George W. Kissinger; state whether or not you are acquainted with the location of that farm, and have ever been on it.

[*Complainants object at this point to any questions relative to the subject inquired of in this question as incompetent at this stage of the case.*]

A. I have been on the place frequently.

Q. 10. It is also in evidence in this case that there was, at some period of time, a hydraulic ram put in on the Draper farm where Kissinger lived, and it has become material to know when such ram was put in; if you have any knowledge of the existence of that ram, will you please state when, and under what circumstances, you first obtained such knowledge. Please take your time and answer fully.

[*Objection continued—to apply to all succeeding questions in the same line of inquiry.*]

A. It was between August and November some time in the fall of '76 that Mr. Given and I one Sunday morning took a walk; it was more of a pleasure walk than anything else; at the time we didn't know where we was going, but we drifted our way out back of the Chestnut Hill cemetery—I should have said Chestnut Grove—I believe it's called Chestnut Grove cemetery; we then went out the Valley road—that is the new public road leading over the mountain—nearly directly opposite Mr. Kissinger's; we were dry, and concluded we'd go somewhere and get a good drink of water, which we got by going down to the spring at Mr. Kissinger's; in going from the spring, leading towards town, we noticed this ram.

Q. 11. It is in evidence that there is a road running along in front of Mr. Kissinger's house; is that the "Valley road" referred to in your last answer?

A. No, sir; I meant the road leading over the mountain to Duncannon.

Q. 12. By what name is that road usually known?

A. Well, I'm hardly able to say; it's called "the mountain road"—that's what it's called, I think—and it was vacated some few years ago.

Q. 13. Describe the location of this ram, which you saw on that occasion, and it's appearance at that time.

A. This ram was located about—between two and three hundred feet north of the house, I should think—between the barn—close by the fence, as near as I could tell without measurement. Well, it was a pipe, I should think about—that's what we call a "stand-pipe," up out of the ground—of two or three inches in diameter—upright out of the ground. It had connections at the bottom for an inlet and outlet.

Q. 14. Do you remember whether or not the ram was in operation when you and Mr. Given saw it?

A. I couldn't say positively whether it was.

Q. 15. Was the ram above or below ground when you saw it on that occasion?

A. The working part was below ground.

Q. 16. What was the appearance of the place in which the ram was located?

A. Why, there was a hole dug out and the ram set in, and loose stones throwed around it—loose stones around the hole.

Q. 17. Do you remember whether or not you went up to the Kissinger house on that occasion?

A. Not to my recollection.

Q. 18. After leaving the place where the ram was located, where did you go, if you recollect?

A. We went back to town.

Q. 19. Are you married now?

A. I am.

Q. 20. When were you married?

A. April 19, '77.

Q. 21. Was it before or after your marriage that you took this walk with Mr. Given and saw the ram, as you have testified?

[*Objected to as inquiring for mere guess-work, and as an incompetent mode of leading the witness to make a guess at the time.*]

A. It was before I was married.

Q. 22. What makes you think it was before you were married?

[*Objected to as calling in terms for mere impression or opinion.*]

Question withdrawn.

Q. 23. What makes you know that it was before you were married?

[*Objected to in view of the last question, which was given in the hearing of the witness, and which called for his impressions upon the subject.*]

A. Why, I was boarding, and our conversation drifted on our boarding and washing—what it cost us each month.

Q. 24. How does the conversation about washing enable you to tell that it was before your marriage?

A. Why, I would hardly get my washing done after I was married —outside.

Q. 25. Were you more or less intimate with Mr. Given before than after your marriage?

A. Well, I didn't meet Mr. Given as frequently after my marriage as before; I kept more at home.

Q. 26. You have stated that the walk which you took with Mr. Given was on Sunday. What enables you to say that it was that day of the week?

A. I always worked the balance of the six days.

Q. 27. What is your father-in-law's name?

A. Oliver H. Miller.

Q. 28. Is he the same Oliver H. Miller who has testified in this case?

A. To the best of my knowledge he is.

Q. 29. When did you last see this Mr. Given, about whom you have been testifying?

A. I don't think I've seen Mr. Given for six years.

Q. 30. Do you mean until recently, or absolutely? Please explain your meaning.

[*Objected to as incompetent, the witness having been asked when he "last saw Mr. Given," and answered that he doesn't think he has seen Mr. Given for six years; the answer does not admit of being explained away.*]

A. Until recently. This morning was the first I've seen Mr. Given for five or six years.

Q. 31. What was the appearance of the top of the Kissinger house at the time you and Mr. Given were on the Kissinger place and saw the ram, as you have testified?

A. Why, it was, I think, a wooden railing around it—to the best of my knowledge—a wooden railing.

Q. 32. Have you been on the Kissinger place since you were up there with Mr. Given, as you have testified?

A. Yes, sir; I've been on it, I guess, once or twice every year.

Q. 33. Does the appearance of the house now differ at all from its appearance as you observed it when you were there with Mr. Given; and if so, in what respect?

A. Well, the house has been painted, and blinds put on it, and the top has been changed.

Q. 34. Have you at any time, since you were at the Kissinger place with Mr. Given, noticed any change of appearance in the place where the ram stands? If so, state what.

A. I noticed that the ram is walled up—around it.

Q. 35. How happens it that while you have been living at Marysville, and this controversy about the ram going on, and your father-in-law called as a witness, you have not before been called to testify in regard to your knowledge of the ram?

[*Objected to as incompetent, and as a transparent attempt to forestall cross-examination by cross-examining the party's own witness.*]

A. I never wanted to be drawn into it; it has been just through ordinary conversation with parties at Marysville that I've been called as a witness.

[*Same objection to this deposition as to that of F. A. Given.*]

Cross-examined by Mr. Howson, de bene esse:

Cross-Q. 36. When did you first know that you were expected to testify in this case?

A. Why, it's about two weeks ago.

Cross-Q. 37. Who then informed you that your testimony would be wanted?

A. I don't just remember who it was that told me that my evidence in the case was—would be called for.

Cross-Q. 38. As, according to your own statement, your recollection would have to go no further back than two weeks or so, I wish you would exercise your memory a little and tell me who it was that first informed you that your testimony would be required in this case.

A. Well, I think it was my father-in-law told me—I wouldn't be positive—my father-in-law, O. H. Miller.

Cross-Q. 39. You say you will not be positive; is this because your memory is defective, or what is the reason that you won't be positive as to something which occurred within two weeks last past?

A. Well, my memory is pretty good, but I've been pretty busy working, and you hear so many things, that I wouldn't be positive, but I'm pretty sure it was Mr. Miller that informed me of the fact.

Cross-Q. 40. You say your memory is pretty good; you have intimated that you rather desired not to testify in this case; these being the facts, as you have given them, can you not positively state whether it was Mr. Miller or some one else who, within two weeks, told you you would be called upon to testify?

A. Well, it was either Mr. Miller or Mr. Fenn; I wouldn't be qualified which of the two; it was either one or the other.

Cross-Q. 41. Where was it that you were told or notified that you would be called upon to testify?

A. It was in Marysville.

Cross-Q. 42. Whereabouts in Marysville?

A. Why, I think it was on one of the public streets there in Marysville—going to or from my work.

Cross-Q. 43. Who owns the house you live in?

A. The house is deeded, I think, to Mrs. O. H. Miller.

Cross-Q. 44. How far from you does Mr. O. H. Miller live?

A. He lives under the same roof.

Cross-Q. 45. How long have you and he been living under the same roof?

A. Since last September.

Cross-Q. 46. You stated in your direct examination that your father-in-law is the same Oliver H. Miller who testified in this case; how long have you known that he had testified in this case, and from whom did you learn it?

A. Well, his wife told me that he took all his books down; that he had to testify in this case—that he had to have his books along; I should think it was about six months ago—about that—probably longer.

Cross-Q. 47. You have known, have you not, that this Oliver H. Miller, since testifying for defendants, has been acting as an agent for defendants, in and about Marysville, to hunt up evidence and summon witnesses?

A. I have known it.

Cross-Q. 48. You knew, did you not, before Mr. Miller came down here to testify last winter, that he expected to be called upon to testify?

A. No, sir; Mr. Miller's a man that don't tell everything he knows.

Cross-Q. 49. Then you say positively, do you, that neither from Mr. Miller, nor Mrs. Miller, nor any one else, had you heard that Mr. Miller was going to testify in this case?

A. I didn't say that I didn't hear it through anybody else.

Cross-Q. 50. From or through whom, then, did you hear it?

A. Well, that I'm not able to say who I heard it from.

Cross-Q. 51. Wasn't it more or less common talk in Marysville that Mr. Miller was going to testify in the case, and isn't that the reason you cannot recollect who it was that told you?

A. Oh, no; there's been a great many citizens of Marysville that's been down on both sides testifying in this case.

Cross-Q. 52. Won't you please give a direct answer to my last question, and say whether or not, from your recollection, it was known and talked of in Marysville that Mr. O. H. Miller expected to give testimony in this case?

A. Why, I don't know it was common talk; I don't think it was. There was other citizens who gave their testimony. I don't suppose Mr. Miller knew he would be employed by the company by giving his testimony. I never asked Mr. Miller whether he was going to be employed, or whether he was going to give his testimony, or anything; he's a man that keeps a good bit to himself, and I knew that.

[*Answer objected to as irresponsive and evasive, and question repeated.*]

Cross-Q. 53. Cross-question 52 repeated.

[*Question objected to as having been fully answered.*]

A. Why, I suppose it was.

Cross-Q. 54. You stated in your answer to question 29, asking when you last saw Mr. Given, that you didn't think you had seen him for six years; as matter of fact you traveled with Mr. Given from Marysville to Harrisburg this morning, did you not?

A. I should have said I hadn't seen Mr. Given for six years until this morning.

[*At the request of defendants' counsel the question is reread to witness.*

Defendants' counsel requests that it be noted that after the witness had given his answer, as above, he requested him to answer the remaining portion of the question; whereupon counsel for complainants insisted that the request for such further answer should be made to appear upon the record.

Complainants' counsel indorses the foregoing statement, with the addition that defendants' counsel had requested the Examiner to reread the question to witness, who appeared, at the time, to have finished his answer.]

Question reread.

A. I did.

Cross-Q. 55. Whereabouts in Marysville did you and Mr. Given meet this morning?

A. At the station.

Cross-Q. 56. When and where first did you meet Mr. Church, the gentleman who examined you in chief?

A. I met Mr. Church in Marysville, at the Central hotel.

Cross-Q. 57. When first?

A. Why, Mr. Church was there some three or four days before I made his acquaintance—perhaps a week before I made his acquaintance.

Cross-Q. 58. Question repeated.

A. I can't remember the first day that I seen Mr. Church; I think the first day that I got acquainted with Mr. Church was on a Monday morning; I can't say the date that I first got acquainted with Mr. Church.

Cross-Q. 59. Was this a week, or two weeks, or a month ago?

A. Well, probably about two weeks ago.

Cross-Q. 60. Who, if any one, introduced you to each other?

A. Mr. Fenn made us acquainted—Mr. W. K. Fenn.

Cross-Q. 61. You went to the hotel to see Mr. Church at the request of Mr. W. K. Fenn; is that the case?

A. No, sir; Mr. Fenn and Mr. Church came into my shop.

Cross-Q. 62. How many times since then have you met Mr. Church before to-day, and where?

A. Well, I never met Mr. Church; I've seen him pretty near every time he comes to Marysville.

Cross-Q. 63. But you and he have had no talk together between the day he and Mr. Fenn came to your shop and to-day; is that what you wish us to understand?

A. Oh, we've met each other several times, and have talked on the ordinary topics of the day, as it's natural that men will when they meet at a hotel.

Cross-Q. 64. You told us in your last answer that you had seen Mr. Church, but had not met him; now I understand you to say that you have met him at the Marysville hotel, and had some conversation with him; I suppose that the subject of this case or that of the Kissinger ram was never mentioned in those conversations; is that what you wish us to understand?

[*Objected to as indefinite, it not being apparent what conversatians are meant by "those conversations."*]

A. The conversation may have drifted on the ram; I wouldn't say that it didn't.

Recess until 2, P. M.

Cross-examination of witness, G. W. Kreidler, suspended, to enable the deposition of Mrs. Mary E. Morley to be taken.

Cross-examination of the witness, George W. Kreidler, resumed:

Cross-Q. 65. How long have you been acquainted with Mr. W. K. Fenn?

A. Since '75.

Cross-Q. 66. Did he ever ask you whether you had any knowledge or recollection about this ram; and, if yes, about when first?

A. That's only been a short time ago.

Cross-Q. 67. Can't you be a little more definite than that? About how long ago?

A. I think it was when Mr. Fenn was in my shop—when he came into my shop on Monday morning.

Cross-Q. 68. You mean the time when he and Mr. Church came there together?

A. Yes, sir.

Cross-Q. 69. And you tell us, do you, that this was the first time Mr. Fenn had said anything to you on the subject?

A. Well, I don't remember whether Mr. Fenn or Mr. Miller—one or the other—asked me whether, at any time, I had soldered any iron pipe for Mr. Kissinger. I told him not to my knowledge.

Cross-Q. 70. Do you recollect when this was that Mr. Miller or Mr. Fenn asked you this question?

A. I do not. I really think, though, that it has been two or three months back; I think it was about that time.

Cross-Q. 71. Wasn't it while the defendants were taking testimony here in Harrisburg during last winter and early spring?

A. That would bring it to the early spring; about three months back, as near as I can recollect.

Cross-Q. 72. You knew, I suppose, at the time the question was asked you, that it was with reference to this hydraulic ram?

A. I did.

Cross-Q. 73. But your memory will not allow you to say whether it was Mr. Miller or Mr. Fenn who asked you the question?

A. The question might have been asked me by both parties—I know it was asked me.

Cross-Q. 74. Didn't Mr. O. H. Miller ever speak to you on the subject of this hydraulic ram more than once?

A. Oh, he may have talked to me in the way of being tired, about subpœnaing witnesses—I know he's come home very late, and been away several days at a time.

Cross-Q. 75. But he never asked you whether you knew anything about the subject, unless he asked you about soldering this pipe; is that what you wish us to understand?

A. I think Mr. Miller asked me one night in Mr. Traver's store whether ever I had soldered any pipe for Mr. Kissinger. I told him I hadn't any recollection of it.

Cross-Q. 76. And you mean to say that is the only question ever asked you on the subject of this ram; is that it?

A. I think so; yes, sir.

Cross-Q. 77. You say that you became acquainted with Mr. Given

some time in 1875; what is your recollection as to the time in 1875 when you formed his acquaintance?

A. Well, that I couldn't tell you, but I think it was in the beginning of the year 1875.

Cross-Q. 78. You and he were both living in Marysville at that time?

A. Yes, sir; Given was working for the railroad company; I was working for Mrs. Stotter at that time.

Cross-Q. 79. You were asked in your direct examination when you went to Marysville to live, and you answered August 27, 1876; if I now understand you, you were living in Marysville in the early part of 1875; how long before that had you lived at Marysville?

A. I went to Marysville in the winter of '74–5, the first time.

Cross-Q. 80. When Mr. Church and Mr. Fenn called on you at your store, three weeks or so ago, did they ask you whether you knew where Mr. Given was?

A. They did.

Cross-Q. 81. Did you tell them, or tell them where they could find out?

A. I told them I didn't know where Mr. Given was. I knew he was in the West, but I couldn't say what part.

Cross-Q. 82. Did they, or either of them, at any subsequent time tell you they had found where Mr. Given was?

A. Yes, sir.

Cross-Q. 83. When did they tell you so, to the best of your recollection? How long after the interview when they came to your shop?

A. It was about three days.

Cross-Q. 84. When and how did you first learn that Mr. Given was coming on here to testify?

A. Mr. Miller told me that on Sunday morning—last Sunday.

Cross-Q. 85. You have told us that Messrs. Church and Fenn informed you that they had learned Mr. Given's whereabouts about three days after they had first interviewed you in your store. Did they tell you at the same time that they had communicated with him, or were going to communicate with him, or say anything at all to you in reference to that?

A. They told me that they had communicated with him.

Cross-Q. 86. Did they say anything to you about the nature of the

communication—what they had said to him, or what they had asked him?

A. Nothing more than where a letter would reach him.

Cross-Q. 87. Did you understand from them, then, that they had telegraphed to Mr. Given where a letter would reach him? Is that what you mean?

A. Yes, sir.

Cross-Q. 88. Do you know, or did they tell you, in whose name that telegram was sent?

A. Yes; it was sent in my name.

Cross-Q. 89. Did they tell you that they had written to him, or were going to write to him?

A. No, sir.

Cross-Q. 90. Were you subsequently informed that they had written to him or not; and if yes, when and by whom were you so informed?

A. I was not informed.

Cross-Q. 91. When were you last on the Kissinger place?

A. I was up there last Sunday evening.

Cross-Q. 92. With whom, and what were you doing there?

A. Well, Mr. Miller and I walked up to see what the Sabbath law-breakers had been doing there.

Cross-Q. 93. Explain yourself a little more fully.

A. I meant what the civil surveyors were doing—what they had been doing.

Cross-Q. 94. Mr. Miller invited you to go up with him to make that inquiry, did he?

A. Yes, sir; of course I lived in the same house and it was natural he should ask me to go up along.

Cross-Q. 95. Why was Mr. Miller's interest in the matter so great?

A. That question you'll have to ask Mr. Miller; I'm not able to answer that.

Cross-Q. 96. You mean to say, do you, that he said nothing to you indicating that he knew who or what the parties were, or why he was curious enough on the subject to take a trip up there to see what they were doing?

[*Objected to as immaterial and assuming.*]

A. He didn't know who the parties were, I think. Well, curiosity will lead a man a good way sometimes.

Cross-Q. 97. When you and Mr. Given were traveling down here this morning, did he give any account of, or tell you anything about his trip East here from Dakota to testify?

A. Well, sir, our ride here was very short—our talk was about his Western home—it's only about twenty minutes' ride, and there was not much time to talk about anything else.

Cross-Q. 98. He didn't tell you whether he had a pass over a certain part of the route?

A. No, sir.

Cross-Q. 100. When last before last Sunday were you at the Kissinger place?

A. I was there last fall.

Cross-Q. 101. Who, if any one, was with you then?

A. I was alone.

Cross-Q. 102. Were you there on business or on one of your pleasure-trips?

A. I stopped on my way back. I was up the valley working and I stopped on my way back.

Cross-Q. 103. What did you stop for?

A. Well, I just merely—I stopped at Mr. Beam's, a little above Mr. Kissinger's place. Well, I hardly know; I stopped to get some fruit on my way back, I think.

Cross-Q. 104. When last before that were you on the place?

A. Last July a year ago; I picked cherries there in July.

Cross-Q. 105. Who, if any one, was with you then?

A. Why, Mr. Miller was picking there at the same time. He was renting the place; he rented the farm for a year.

Cross-Q. 106. When did that year begin, and when did it end, do you recollect?

[*Objected to as immaterial, incompetent, not cross-examination, and calling for secondary evidence.*

To which complainants reply that the witness was asked in direct examination as to visiting this farm since 1876, and that, therefore, any questions as to any of those visits, or matters connected therewith, or any questions testing the witness' recollection as to such matters are proper cross-examination.]

A. Why, I think Mr. Miller went to work in the spring. It was two years ago; that would be the spring of '82.

Cross-Q. 107. During the year that he was working that farm, were

you there upon more than one occasion, and if yes, about how frequently?

A. Well, I couldn't say how often; I helped to make cider there one night till well on to midnight.

Cross-Q. 108. The fact is, I suppose, that you were on the farm during that year a number of time; is that the case?

A. Yes, sir.

Cross-Q. 109. I suppose that on your way down with Mr. Given this morning there was no conversation as to the testimony which he had given here yesterday?

A. I merely asked him if he had given his testimony, and he said he had, and that was just shortly before we got out of the train at the depot.

Cross-Q. 110. And that one question and answer was all the talk that passed between you on the subject; is that what you wish us to understand?

A. Yes, sir; our conversation was principally about his Western home.

Cross-Q. 111. You know perfectly well, don't you, that the road which passes in front of the Kissinger house is called the "Valley road?"

A. I do.

Cross-Q. 112. It has been known by that name, hasn't it, all the while you have been living there?

A. Yes, sir.

Cross-Q. 113. And you know perfectly well, don't you, that the road leading over the mountains, and which you say you and Mr. Given took the day you and he went walking, is, and during your residence there has been, known as "the Mountain road?"

A. Yes, sir.

Cross-Q. 114. Is that road in use now?

A. To the top of the mountain.

Cross-Q. 115. What sort of weather was it that day you and Mr. Given took this walk?

A. A very fine morning.

Cross-Q. 116. How was it as to temperature?

A. Well, it wasn't so awful hot; of course we went pretty early in the morning—between eight and nine o'clock—somewhere there.

Cross-Q. 117. I judge from your last answer that, according to your recollection, this walk was taken in warm weather; is that a fact?

A. Yes, sir; it was taken between—it was taken in the fall of the year.

Cross-Q. 118. What time in the fall?

A. Between August and November sometime; couldn't give you the exact date.

Cross-Q. 119. You're certain, are you, that it wasn't as early as July?

A. I'm certain of that, because I wasn't living in Marysville in July, 1876; I was absent from the place for about nine months.

Cross-Q. 120. If I understand you, you have been living in and about Marysville continuously from August, 1876, down to the present time.

A. Yes, sir.

Deposition taken, reduced to writing, and affirmed and subscribed to before me this 11th day of June, 1884.

PAUL CHARLTON,
Notary Public, Special Examiner.

G. W. KREIDLER.

MARY E. MORLEY, *being produced and affirmed, upon examination, saith:*

I live at Marysville, Perry county, Pennsylvania; am thirty-five years old.

Examined by Mr. Melville Church:

Q. 1. What is your husband's name?

A. Thomas W. Morley.

Q. 2. A witness named Thomas W. Morley was examined on behalf of defendants in this cause (defendants' sur-rebutting record, pp. 567-577, inclusive,) and testified that his age was fifty-two; residence, Marysville; occupation, merchant. Was and is that person your husband?

A. Yes, sir.

Q. 3. How long have you resided in Marysville?

A. Nearly eleven years.

Q. 4. Whereabouts in Marysville did you first reside?

A. On Main street, below the railroad.

Q. 5. Where did you next live?

A. Above the railroad.

Q. 6. When did you move from your house on Main street below the railroad to the house above the railroad?

A. '78—spring of '78.

Q. 7. Who occupied the house above the railroad prior to its occupancy by your family?

A. My brother-in-law, Stephen Morley.

Q. 8. In what house are you now living?

A. The same house.

Q. 9. It is in evidence in this case that Dr. Andrew J. Traver, Mr. Thomas W. Morley, and Mr. Abram C. Dissinger constituted at one time the board of triennial assessors for the borough of Marysville. Have you any knowledge of the fact of your husband having been connected with that board of assessors?

A. Yes, sir.

Q. 10. State, if you know, how many terms your husband served on that board?

[*Objected to as not seeking the best evidence.*]

A. Two.

Q. 11. During his first term, where were you living?

A. Below the railroad.

Q. 12. And where were you living during his second term as assessor?

A. Above the railroad.

Q. 13. There is a controversy in this case about a certain hydraulic ram which, at some time or other, was placed upon the farm lying just back of Marysville, and occupied for a number of years by Mr. George W. Kissinger as tenant of Mr. Thomas Draper; if you have any knowledge of there being such a ram, will you please state when, where, and in what manner the matter was first brought to your attention?

[*Objected to as improper at this stage of the case.*]

A. When Mr. Morley was assessor in 1876; after his return we were sitting at the table and he was speaking of his assessment, he spoke of this ram, and tried to explain to me the reason why it was

there—to convey the water from the lower part of the yard to the house; this was in 1876. That is all I know in regard to it.

[*Answer objected to as mere hearsay, not evidence, and as otherwise incompetent.*]

Q. 14. You have stated that when Mr. Morley was assessor the second time, you were living in the house above the railroad which you at present occupy; will you now please tell us by what circumstance, if any, you are able to say that you were living there at that time?

A. Well, we lived there since 1878; there are many circumstances that I could give you as evidence, but we were living there in 1878 and haven't moved since; I should think that was sufficient evidence.

Q. 15. State, if you know, whether or not your husband, Mr. Morley, took part in the making the assessment during his second term, while you were living in your present house, as you have stated?

[*Objected to as leading.*]

A. Mr. Morley was sick during the second term, and did not make the general assessment. I remember of his going out once about a block from the house. He was not able to go with them, as he was sick with rheumatism—could not go only a short distance.

Q. 16. State whether or not, from your knowledge of your husband's condition at the time of this second triennial assessment, he was able to go as far from his home as the Kissinger farm?

[*Objected to as incompetent—calling in terms for opinion, not for fact.*]

A. No, sir; he was not.

Q. 17. About how long was Mr. Morley disabled by this attack of rheumatism which you have spoken of?

A. I can't say positively; I should think it was about a month.

[*Objected to as not evidence.*]

Q. 18. State whether or not you have any knowledge of your husband's being visited by his co-assessors, Dr. Traver and Mr. Dissinger, while he was laid up with rheumatism, as you have testified?

[*Objected to as leading.*]

A. No, sir; I don't remember. Not at the house; they might have been in the store. He frequently met his business men in the store, which is right next to the house; I couldn't say as to that. I say "frequently;" I mean always—he always met his business men there if it was possible for him to see them there.

Q. 19. Did you ever visit the Draper farm while Mr. Kissinger lived upon it?

A. No, sir.

Q. 20. Did you, at any time, visit the Draper farm; and, if so, when?

[*Objected to as immaterial.*]

A. Yes, sir; while Mr. Lewis lived there.

Q. 21. How many times, if more than once, have you visited the Draper farm?

[*Same objection, and as new matter.*]

A. Well, I was there at least a dozen times. Mr. Lewis lived there two years, and I was up there a number of times—I can't positively say how many times I was there. I visited the farm three times while Mr. Shell lived there.

Q. 22. Were you ever around at the rear side of the dwelling-house on the Draper farm?

[*Same objections.*]

A. Yes, sir.

Q. 23. Did you ever see a hydraulic ram on the Draper farm on the occasion of these visits, or any of them, or at any other time?

[*Same objections.*]

A. No, sir.

Q. 24. If any one besides your own family lives at your house, will you please give his or her name?

A. My niece is with me—Grace Smith.

Q. 25. How long has Miss Smith been living with you, and if she has lived with you more than once, state how many times, and when she has lived with you?

A. My niece came the first day of last September, and she has been with me since. She was here in '79—that is the only time she ever visited me. She was here about three months in '79.

[*Deposition objected to as incompetent, and not sur-rejoinder.*]

Cross-examination by Mr. Howson, de bene esse:

Cross-Q. 26. When and by whom were you first asked, Mrs. Morley, as to your recollections about this hydraulic ram, or whether you had any recollections about it?

A. Mr. Fenn was the first that I heard speak of it—William K.

Fenn—I cannot say at what time, as I have heard him speak so many times of it.

Cross-Q. 27. You have heard Mr. Fenn speaking about it a great many times since about last summer or fall; isn't that the case?

A. I judge it might be a year or so ago.

Cross-Q. 28. When did you first make the acquaintance of Mr. Church, the gentleman who examined you in chief?

A. About three weeks ago.

Cross-Q. 29. How did you come to make his acquaintance then, and who, if any one, was with him?

A. I made his acquaintance through Mr. Fenn.

Cross-Q. 30. I suppose that you and they had some talk about this matter of the hydraulic ram at that time?

A. Not at the time I first met him.

Cross-Q. 31. Where was it that you first met him?

A. Well, I first became acquainted with him at the house; they called there to see Mr. Morley, I suppose.

Cross-Q. 32. Do you know what their business was with Mr. Morley on that occasion?

A. No, sir.

Cross-Q. 33. They have visited your husband's house a number of times since then, have they not?

A. Only once that I remember.

Cross-Q. 34. Do you remember when that was?

A. It was last—about two weeks ago.

Cross-Q. 35. When was it that you and Mr. Church and Mr. Fenn, or either of them, had any talk about this matter of the hydraulic ram?

A. It was when they called the last time. It was when they called the second time—to be more definite.

Cross-Q. 36. Who was present at that talk, besides yourself and Messrs. Church and Fenn?

A. Mr. Morley and my niece.

Cross-Q. 37. Have you any recollection as to how long Messrs. Church and Fenn were talking with yourself, your husband, and your niece on that occasion?

[*Question objected to as misleading.*]

A. No, sir.

Cross-Q. 38. This, if I understand you, was the last occasion on

which you met and talked with Mr. Church and Mr. Fenn, or either of them, until to-day; do you wish to be so understood?

A. No, sir.

Cross-Q. 39. Was it the last occasion on which you and they had any talk together in reference to this matter of the hydraulic ram?

A. Yes, sir.

Deposition taken, reduced to writing by me, and by the witness affirmed to and subscribed before me this 11th day of June, 1884.

PAUL CHARLTON,
Notary Public, Special Examiner.

Mrs. MARY E. MORLEY.

SAMUEL C. WEBER, *being produced and affirmed, upon examination, saith:*

I live at Mechanicsburg, Cumberland county, Penna.; am forty-six years old; am a mason.

Examined by Mr. Jacobs:

Q. 1. Did you ever live along the Yellowbreeches creek; and if so where and when?

A. Fairview township, York county; at David Miller's mill; in 1873.

Q. 2. What time in 1873 did you go to live there?

A. First week in February.

Q. 3. When did you move away?

A. First day of October, 1873.

Q. 4. Immediately before you moved there, where had you been living?

A. Mechanicsburg.

Q. 5. When you moved away from Miller's mill, where did you move to?

A. To Mechanicsburg.

Q. 6. How far is Mechanicsburg from Miller's mill?

A. Five mile.

Q. 7. Who was running the mill when you moved there?

A. Jacob Miller.

Q. 8. How long did he remain there after you came?

A. Till the close of March—latter part of March.

Q. 9. Where did he move to when he left Miller's mill?

[*Objected to as immaterial.*]

A. He moved to Shiremanstown.

Q. 10. Is Miller's mill above, or below Zinn's clover-mill?

[*Complainants object at this point to any examination of this witness on the subject of bridges or floods in the Yellowbreeches, as incompetent at this stage of the case.*]

A. It is below.

Q. 11. Do you remember of any flood along the Yellowbreeches creek whilst you lived at Miller's mill?

[*Objected to as leading.*]

A. Yes, sir.

Q. 12. At what time in the year was it?

A. August—between the tenth and the fifteenth.

Q. 13. If you saw anything come down the creek on that flood, will you state what it was?

A. Yes, sir; I saw two logs—apparently been nailed side by side—going down over the dam.

Q 14. Did you, at any time after that flood, and whilst you were living at Miller's mill, have occasion to go up to Zinn's clover-mill; if so, state when it was, and for what purpose you went?

[*Objected to as leading and assuming.*]

A. Yes, sir; it was about a week after that I had occasion to go up to see Mr. Zinn—Mr. Adam Zinn.

Q. 15. On which side of the creek did you go up—the Cumberland or the York county side?

A. York county side.

Q. 16. Did you cross the creek at the clover-mill?

A. No, sir.

Q. 17. Why did you not cross?

A. Because the foot-bridge was gone.

Q. 18. Please state whether it was all gone, or only a part of it.

A. Why, the York county side was gone—the span on the York county side—the other side and the span and two logs hung, apparently fastened to a tree.

Q. 19. Were the trestles or piers which supported the bridge gone, or not?

[*Objected to as leading, the witness having already been asked the question whether all the bridge was gone or only a part of it, and given what purports to be his recollection of it.*

Defendants' counsel replies that the witness has not testified a word about the piers, and that his attention has not, until this question was put, been called to them.

To which complainants rejoin that question No. 18 drew the attention of the witness to the whole bridge, of which the piers are a part.]

A. Yes, sir, the York county side was gone; the other one was left.

Adjourned to 8, P. M.

8, P. M.

[*Objection to deposition renewed on the ground above stated.*]

Cross-examination by Mr. Howson, de bene esse:

Cross-Q. 20. How long have you been in the mason business at Mechanicsburg?

A. Two years; that is, before '73.

Cross-Q. 21. Have you been living in Mechanicsburg ever since 1873?

A. Yes, sir.

Cross-Q. 22. Been carrying on the mason business all the time?

A. No, sir; in the summer season I was carrying on the mason business, and in the winter season the coopering business.

Cross-Q. 23. When were you first asked about your recollection of the flood in the Yellowbreeches?

A. Last Thursday.

Cross-Q. 24. Who then saw you about the matter?

A. Peter Hess.

Cross-Q. 25. Did Peter Hess at that time tell you that he had testified, or was going to testify, about the matter?

A. No, sir; not at that time, but he had told me afterward.

Cross-Q. 26. Where was it that he first saw you about the matter?

A. In Harrisburg here.

Cross-Q. 27. When was it he told you that he had testified, and where?

A. The same day, in the evening, when him and I had a talk over the past, and what occurred that summer when I lived there.

Cross-Q. 28. When did you come into Harrisburg to testify?

A. Saturday following.

Cross-Q. 29. You were at Mr. Jacobs' office that day; if yes, during how much of the day?

A. On Saturday; yes, sir—all day.

Cross-Q. 30. Whom did you meet and talk with there that day?

A. Well, the only man I knew was Mr. Deckman—the only man I knew that day, Mr. Samuel Deckman.

Cross-Q. 81. Were you in town here again on Monday for the purpose of testifying?

A. Yes, sir.

Cross-Q. 32. Same question as to Tuesday.

A. Yes, sir.

Cross-Q. 33. You met Mr. Samuel Deckman both those days?

A. Yes, sir.

Cross-Q. 34. Have you met him here again to-day?

A. Yes, sir.

Cross-Q. 35. Where?

A. Here in the Trust building—in the hall there.

Cross-Q. 36. Did you come from your home in Mechanicsburg this morning?

A. Yes, sir.

Cross-Q. 37. As Mr. Samuel Deckman had completed his testimony before noon yesterday, can you tell me what he was doing here to-day?

A. No, sir.

Cross-Q. 38. Have you been at Zinn's clover-mill at any time within the last year or two?

A. I haven't been there, to the best of my recollection, for five years.

Cross-Q. 39. How long have you known Mr. Samuel Deckman?

A. About fifteen years.

Cross-Q. 40. Are you acquainted with Mr. Abram B. Shank, constable of Lower Allen township?

A. Yes, sir.

Cross-Q. 41. How long have you known him?

A. To the best of my recollection, twenty years.

Cross-Q. 42. When were you last at Miller's mill?

A. To the best of my judgment, about five years ago.

Cross-Q. 43. At the same time as, or at a different time from your last visit to Zinn's clover-mill?

A. The same time.

Cross-Q. 44. What were you doing in that neighborhood then?

A. Spending a day fishing along the creek.

Cross-Q. 45. Were you up at the clover-mill more than the one time you have mentioned, during the period when you were living at Miller's mill?

A. No, sir.

Cross-Q. 46. What business did you carry on while you lived at Miller's mill?

A. Driving his flour-team and farming for him—that is, his mill-team—Mr. David Miller's.

Cross-Q. 47. You were not at or by the clover-mill during that year 1873, except the once you have testified to; is that the case?

A. I was there once before; in the spring.

Cross-Q. 48. What is the distance from Miller's mill to the clover-mill by road?

A. Well, I reckon about a mile and a quarter.

Deposition taken and reduced to writing by me, and by the witness affirmed to and subscribed in my presence on this 11th day of June, 1884.

SAMUEL C. WEBER.

PAUL CHARLTON,
Notary Public, Special Examiner.

Adjourned to Thursday, June 12, 1884, at 9.30, A. M.

JUNE 12, 1884, 9.30, A. M.

Resumed pursuant to adjournment.

Present, Mr. Howson for complainants, Mr. Melville Church for respondents.

THOMAS W. MORLEY, *being produced and sworn, upon examination saith:*

Examined by Mr. Melville Church:

Q. 1. Are you the same Thomas W. Morley who last December tes-

tified on behalf of defendants in this case, and whose deposition is printed on pp. 567–577, inclusive, defendants' sur-rebutting record?

A. I gave testimony here last December; I suppose I'm the same Thomas W. Morley; I don't know what page it's printed on.

Q. 2. Please state whether or not, since giving you testimony last December, any one representing the complainants in this case has interviewed you in regard to the testimony given by you; and if so, state who it was, and when and under what circumstances that interview took place.

[*Objected to as immaterial.*]

A. That would be a little difficult for me to get at. I suppose Mr. Brooks is a representative of the Bell Telephone Company, and we had a few moments' conversation—I can't tell when—it's not long since—perhaps one day last week, that I saw Mr. Brooks at Mr. Beers', at Marysville. Mr. Beers asked me to come over to his house—gave me an introduction to Mr. Brooks; and I don't know that I'll be able to repeat the conversation; don't suppose I could.

Q. 3. Is James W. Brooks, the gentleman now present in this room, the gentleman with whom you had the interview at Mr. Beers' house, as you have stated?

A. That's the gentleman there—Mr. Brooks—I don't know his given name.

Q. 4. Please give, as nearly as you can, the substance of the conversation that passed between you and Mr. Brooks at Mr. Beers' house on the occasion you have mentioned.

[*Objected to as incompetent and immaterial.*]

A. Mr. Brooks, after we had been introduced to each other, brought up the subject of the controversy of this ram of Kissinger's by saying that "You had given testimony in the matter." I think that was the way he introduced the matter. I replied: "Yes, that it seemed strange that there was so much difference, or—in the opinion or the minds of the people, as to the time when that ram was put in." He replied: "Yes;" that after so long a time that anything that a person was not especially interested in, dates would be very easily forgotten. I think that is about the reply that he made—to that effect. I then related to him how I came to go on the stand, through our making the assessment—Dr. Traver, Dissinger, and myself—triennial assessment—that so far as I was concerned, I only knew that there was a ram there. When it

was put there I had no knowledge. I said to him that Judge Hill, Mr. Jacobs, and Mr. Fenn asked me to go up to the Draper farm and measure the pipe that was connected with this ram. I did so. That on our returning, Judge Hill asked me if I didn't know something about when this ram was put in. I told him I did not. He asked me if I recollected when I first saw it. I told him it possibly might have been when we took the triennial assessment—the first triennial assessement. He asked me when that was. I told him I could not tell what year, but that we served one term, were reëlected for the three years after; that now the third triennial assessors had been elected. He says, "Why, that would put it back to '76." I said I didn't know whether the ram was there or not at that time; that perhaps Dissinger or Traver might recollect about it. Mr. Brooks then said that he could see nothing special or particular—I don't remember the term he used—of the '76 assessment, that would establish anything especial or particular in a man's mind; it was not different from any other assessment; that this conversation might have taken place between Dr. Traver, Mr. Dissinger, and myself in '79 in place of '76. I think I told Mr. Brooks that I had no recollection whatever of holding a conversation with the two gentlemen on the subject of the ram, but there was one thing I was positive of, I did not go up to Kissinger's place, or the Draper place, with them in 1879. We had some little conversation. I would say here that our conversation ended at that. We had, prior to my telling him that I was not there with them in '79—there was some little conversation relative to some of the witnesses who had given testimony and afterwards found that they had been mistaken in their dates. I can recall three that—I remember the Heisley boys—that had fallen into an error in their reckoning. I think he also mentioned Mr. David Cowens who had made a mistake. I believe that is all that passed between us that day; I can't remember of any more.

Q. 5. Do you remember whether or not, in your conversation with Mr. Brooks, there was anything said about the reason why you knew you were not at the Kissinger place with Dr. Traver and Mr. Dissinger in 1879?

[*Objections continued.*]

A. I can't tell whether I gave him the reason why I knew it or not, but I think I told him that I wasn't able to go in 1879.

Q. 6. State whether or not you were ever requested to meet with

any of the representatives of the complainants in this case, other than at the time when you were invited over to Mr. Beers's house to see Mr. Brooks?

[*Objections continued.*]

A. Mr. Beers, one evening, asked me to come to Harrisburg, that Mr. Dissinger and him were coming down; I said I couldn't go—"so what do you want with me?" He said, "Oh, I'd like you to come along down; you'd better put on your coat and go." I replied that I was too tired and wouldn't go down.

Q. 7. State whether or not since giving your testimony in this case last December you have had any talk with Mr. Dissinger about the testimony that he gave for the defendants, or about the subject of your triennial assessments?

[*Objections continued.*]

A. I have, yes, sir—a conversation with Mr. Dissinger on the subject.

Q. 8, State whether or not Mr. Dissinger ever made mention to you of the fact that any representative of the complainants had been to see him about the subject of his testimony?

[*Same objections and as asking for hearsay.*]

A. I don't think Mr. Dissinger ever made mention of it until I asked him what they wanted of him. We then had some conversation—as near as I can recollect—to this effect: that they wanted to impress upon his mind that he had made a mistake in his testimony as to the date. I asked him what his—what he thought of it; he replied that he could not make up his mind that he was wrong. I said: "I cannot say whether you are right or wrong, for I have no recollection of the conversation taking place that you said passed between us on that occasion —in 1876." He said it was very strange that I could not remember Dr. Traver and myself trying to explain to him the workings of a hydraulic ram—the principle of it. He replied to this effect, as near as I can remember: that the Bell Telephone Company were trying to establish a doubt in his mind as to the correctness of the date that he had given; I do not recollect of ever having had any other conversation with him on the subject.

Q. 9. Was anything said about the assessment of 1879 that you recollect of?

[*Objections repeated, and also in view of the closing statement of the last answer.*]

A. I can't call to my mind anything that was said.

Q. 10. Did you on any other occasion have any conversation with Mr. Dissinger about your having taken part in the assessment of 1879?

[*Objected to as incompetent and immaterial.*]

A. I may have had; I can't recall it in particular.

Q. 11. State whether or not, in your conversations with Mr. Dissinger, you gave him any reason for knowing that you did not go on the Kissinger place in 1879, as you had told Mr. Brooks.

[*Objected to as incompetent and immaterial for the reason, among others, that the witness has already twice stated that he doesn't now recall any particular conversation with Mr. Dissinger about the* 1879 *assessment.*]

A. I can't recall my having told him so; the possibilities are that I did: I can't recall it to my mind.

Q. 12. Did Mr. Dissinger tell you who had been to see him representing the Bell Company?

[*Objected to as incompetent, immaterial, and trifling.*]

A. I don't think that he did; he told me that he was at Mr. Beers's, and met Mr. Brooks there; this was at the time when him and me had the conversation I have already alluded to.

[*Entire deposition objected to on grounds stated, and cross-examination waived.*]

Deposition taken, reduced to writing, and by the witness sworn and subscribed to before me this 12th day of June, 1884.

PAUL CHARLTON,
Notary Public, Special Examiner.

T. W. MORLEY.

JOSEPH W. RHOADS, *being produced and sworn, upon examination saith:*

I live about two mile above Marysville, Perry county, Pennsylvania; am forty-five years old; am a laborer.

Examined by Mr. Melville Church:

Q. 1. How long have you lived at or near Marysville?

A. I was raised about two mile above Marysville—born there and raised there.

Q. 2. How long have you lived where you are at present living?

A. Seven years.

Q. 3. Where did you live just prior to moving to the house where you now live?

A. I lived right across from where I now live; over at the other road, about a half a mile from where I now live.

Q. 4. How long did you live at that house?

A. In the neighborhood of about five month.

Q. 5. Where did you live prior to living in the house last mentioned?

A. Churchville, Dauphin county.

Q. 6. Do I understand you that you moved from Churchville to the place near Marysville?

A. Yes, sir.

Q. 7. If you have any rent receipts showing when you lived at Churchville, will you please produce them, and give to the Examiner the latest one—that is, the one bearing the latest date?

[*Witness hands to the Examiner rent receipt, which is copied on the record as follows:*

"Churchville, Oct. 23th 1876

Recd of Joseph Rhoads six dollars Rent

(signed)

Christian E. Hess."]

A. Yes, sir.

Q. 8. I notice that the receipt which has been produced and copied on the record is dated October 23, 1876; state, if you know, for what month that rent was paid.

A. For the month of October.

Q. 9. State when you vacated the house rented to you by Mr. Christian E. Hess, whose name is signed to this receipt.

A. Between Christmas and New Year's, '76.

Q. 10. State whether or not you have the receipts—if any were given—for the rent of the house last referred to for the period of time intervening between the date of the receipt you have produced and the date when you moved from that house.

A. They are about some place if they were not destroyed by the fire.

Q. 11. Where were you working at the time you were a tenant of Mr. Hess?

A. At Steelton, in the hammer-mill.

Q. 12. While you were working at Steelton, did you keep any record of your time?

A. I did part of the time—after I went to helping at the heating-furnace.

Q. 13. What work were you engaged upon while you were employed at Steelton, just prior to the time you quit working there?

A. I was helping on a heating-furnace to heat the ingots.

Q. 14. If you have preserved the record of your time while working at the heating-furnace, as you have testified, will you please produce it and point out to the Examiner the entry of the last work that you performed there?

[*Witness here produces book, and points to entry upon page 162, as follows:*

"24. 665. 350. 38. 120."

Examiner certifies that the page preceding is headed "November, 1876," and that entries follow in order, similar to that above quoted, to the various days of said month, and that upon said p. 162 the entry above quoted is the last which seems to apply to same subject-matter.]

Q. 15. Will you please explain the meaning of the entry which the Examiner has above quoted?

A. The 24 of November, 665 tons. Now, that 350 I can't—that there is of—I can't altogether explain that rightly myself any more. Them there—that's the tons—350 tons, 38 tons, 120 pounds. This here is what we had made in the whole month to the time I quit—665 tons.

Q. 16. In whose handwriting are these entries, and when were they made?

A. In my own handwriting, and they were made when the work was done.

Q. 17. In your answer number 6, you gave us to understand that you moved from Churchville to Marysville. Do you remember when it was that you moved to Marysville?

A. In '76—between Christmas and New Year's.

Q. 18. When were you at Marysville last before you moved there to live, from Churchville, as you have testified?

A. In October, '76.

Q. 19. What was the object of that visit of October, '76?

A. I went up to see my relations.

Q. 20. What relations had you there at that time?

A. I've got a father there, three brothers, and one sister.

Q. 21. Give the names of your brothers.

A. Cyrus, George Washington, and John H. Rhoads.

Q. 22. Whom did you stop with when you were at Marysville on the occasion of that visit?

A. At John's—John H.'s.

Q. 23. Where did he live at that time?

A. About two mile and three quarters above Marysville, where he now lives.

Q. 24. By what road did you come to Marysville on the occasion of this visit in October, '76, as you have testified?

A. I came to Steelton, and from there up, on the railroad.

Q. 25. At what station did you get off?

A. Marysville station.

Q. 26. It has appeared in evidence that there were two stations in Marysville—one called "Haley's," and one called "Marysville station"—which of these stations do you refer to?

A. The upper one—Marysville station.

Q. 27. Where did you go from the Marysville station on the occasion of this visit?

A. Well, I was there a while with my brother George—both my brothers were around there—Cyrus and George—and from there I went up to my other brother's—to John's. George was assistant ticket agent, Cyrus was a car inspector, at Marysville.

Q. 28. What road did you take in going up to your brother John's from the Marysville station? And if you remember that any event happened while going up to John's on that occasion, will you please state what it was?

A. I went up "the back way"—what we call "the back way"—and I came in across the Draper farm there, and I came in to the spring; stopped there to get a drink. I seen the spring was walled up and a pipe in it with a screen on it. It was to carry water some place; I thought it was to carry water out to the barn-yard. That's about all I seen.

[*Objected to as immaterial and not competent in sur-rejoinder.*]

Q. 29. State whether or not you ever obtained any further information as to the purpose of that pipe which you saw in the spring; and, if so, when and where.

[*Objected to as incompetent.*]

A. When I got up to my brother John's we got a-talkin' about this spring, and I told him they'd got it walled up, and that there was a pipe in it with a screen on it, and I told him I thought it was to carry water to the barn-yard, and he said it wasn't, that it was to carry water to the house. That's about all I know about it.

[*Answer objected to as hearsay.*]

Q. 30. I notice in the book which you have produced, after the entry which has been quoted by the Examiner from p. 162, the following entry:

"A. D. 1877 Jan
J h Rhoads Dr. for
shoe mending
20 to 1 pr boots 25
23 to 1 pr shoes 15
Aprile
14 to sewing a shoe 5 "

Will you please state who made that entry, and when it was made?

A. I made it myself, sir, and I made it after I had the work done—when the work was done, then I'd put it down.

Q. 31. Where were you living when that work was done, and when the entry was made?

A. I lived down in a little house at the "new road," about a half a mile from where I live now.

Q. 32. A witness produced for the defendants (defendants' sur-rebutting record, pp. 851–853) testified that his name was John H. Rhoads; age, forty; residence, Rye township, Perry county; by occupation a laborer; state whether or not that person is your brother, John Rhoads, to whom you have referred in your testimony.

A. Yes, sir.

[*Entire deposition objected to as immaterial, and not competent in sur-rejoinder, being merely cumulative in character, and there appearing no reason why this witness was not produced during the taking of defendants' sur-rebutting testimony.*]

Recess until 2.30, P. M.

2.30, P. M.

Examination of witness resumed.

Cross-examined by Mr. Howson, de bene esse:

Cross-Q. 33. I understand from your deposition that you have been

living near Marysville continuously from the first of the year 1877 down to the present time; is that so?

A. Yes, sir.

Cross-Q. 33½. What township are you living in?

A. Rye township.

Cross-Q. 34. How far from your brother, John H. Rhoads, who testified here for defendants last winter?

A. It's about three quarters of a mile.

Cross-Q. 35. Which is the nearest road between your home and the village of Marysville?

A. The old township road down into the center of the town.

Cross-Q. 36. Has that road any name by which it is generally known?

A. No more than the township road, or county road.

Cross-Q. 37. In what direction from Marysville is your home?

A. Well, it lays about north-east, I think; or at least I should think so, anyway.

Cross-Q. 38. This old township road which you talk about—does it follow the line of the river, or run back into the country away from the river?

A. It runs back into the country; it's not likely it would run along the river when it runs back into the country, away from the town, along the valley.

Cross-Q. 39. Is this old township road also the nearest way from the place where your brother lives to the village of Marysville?

A. Yes, sir—to the center of the town it is.

Cross-Q. 40. Who first spoke to you about giving testimony in this case?

A. There was nobody asked me anything about it more than Mr. Fenn and Mr. Church. They asked me what I knowed about it; then they went—I told them what I knowed about it, and then they left.

Cross-Q. 41. When was it that Mr. Fenn and Mr. Church saw you, and where?

A. Why, last—I believe it was last Tuesday a week ago, at my place there, where I live.

Cross-Q. 42. When did you first hear about this controversy that has been going on about the ram on the Draper farm?

A. Well, the time I seen that thing in the spring was the first I heard of it.

Cross-Q. 43. You do not seem to understand my question, which means, when was it that you first heard that there was a question, or a difference of opinion, as to the time when the ram was put in on the Draper farm?

A. I don't know as I ever seen the ram; I can't tell you when I heard the first of it.

Cross-Q. 44. Some time ago, wasn't it?—a number of months ago?

A. Yes, sir.

Re-direct examination by Mr. Melville Church:

Q. Q. 45. Which is the nearer road from the upper Marysville station to your brother John's house—from the station over to the road which runs up through the middle of Marysville, and up that road which you call the township road, or the other road which you say you took on the occasion of your visit to your brother in October, 1876?

[*Objected to as immaterial and not re-direct examination.*]

A. It's only a path or a by-road that comes across there; that's the nearest; its nearer than to come down the other way.

Q. Q. 46. Please state now which of the two roads I have indicated to you is the nearer between the upper Marysville station and your brother John's house.

A. Why, the by-way.

Re-cross-examination by Mr. Howson:

Re-cross-Q. 47. What is the nearest way from the upper Marysville station to where you now live?

A. Well, there is no Marysville station there any more—it's played out.

Re-cross-Q. 48. Well, what is the nearest way, then, from the upper part of Marysville, in the neighborhood of what was the upper Marysville station, to where you now live?

A. Well, from the upper part, the nearest way would be to come across through what they call the Chestnut grove.

Re-redirect examination by Mr. Church:

Q. Q. Q. 49. Is the path which you took in 1876, between the upper Marysville station and your brother's house, now open or closed?

[*Objected to as not re-direct examination.*]

A. It's closed.

Deposition taken, reduced to writing, and by the witness sworn and subscribed to before me, this 12th day of June, 1884.

PAUL CHARLTON,
Notary Public, Special Examiner.

JOSEPH W. RHOADS.

JACOB EVANS, *being produced, affirmed, and examined, saith:*

Examined by Mr. Hill:

I am the same Jacob Evans who testified as a witness for complainants in this case, in January, 1882, at Philadelphia, (see complainants' printed record, p. 974,) and who testified in October, 1883, at Harrisburg, in behalf of respondents, (see respondents' printed sur-rebutting record, page 888.)

Q. 1. Do you know John M. Fisher, George Ditlow, and Elias Garman?

A. Yes, sir.

Q. 2. Mr. Fisher has testified recently (see complainants' printed record, p. 2103, *et seq.*) to the effect that in the summer of 1883, about hay-making time, Jacob Evans, George Ditlow, Elias Garman, John M. Fisher, and Mrs. Jacob Evans, were in front of his (Fisher's) house, at the road, when John C. Comfort came along in a buggy with a lady and said to you: "Well, Jake, what is your opinion on the talking-machine to-day?" and that you replied: "About the same; I never saw it, and don't believe there was one." George Ditlow has testified in behalf of complainants (see complainants' printed record, page 2125) to substantially the same effect, stating that Mr. Comfort asked you how your "mind run on the talking-machine," and you said: "It runs about the same as it did before," and said you "didn't believe he had one there," and "never seen one there." Mr. Garman has testified in behalf of complainants (see page 2335, complainants' printed record) to substantially the same effect, stating that Mr. Comfort asked your wife what she thought of the talking-machine at the present time, and, turning to you, asked you the same question, you making the reply that it was just about the same as it was before; that you "never seen one there, and didn't think there ever was one there." Do you remember the circumstance of your being in front of Mr. Fisher's house, at the road,

in company with George Ditlow, Elias Garman, John M. Fisher, and your wife, and John C. Comfort's coming along in a buggy with a lady and conversing with the party there?

A. Yes, sir; I remember the time, and no such language was used in regard to that question of the telephone.

Q. 3. Will you please state what the conversation was between you and Mr. Comfort at that time?

A. Well, when Comfort came driving up there my boy had been strayed away, and my wife had just come there after finding him. Comfort's first remarks was—when he stopped he asked: "The lost is found." I had asked him how he had found it out. Comfort went on to tell me that he came past my place, and he was informed by an old lady there. And I made the remark, then, that I should do so and so with the boy—thrash him or rake him off—for straying away. And after talking about the facts, he asked me whether Drawbaugh and Jacobs had been down there, and when they were down, and what they had to say on the telephone. I told him when they had been down—not so very long ago—that they didn't have much to say about the telephone. I changed the subject by asking him his opinion on the telephone—which side he thought would be victorious, the Bell or the Drawbaugh. He says: "The Bell, certainly; the Drawbaugh haven't got one to three." Then, so far as I remember, the subject was changed off on to other conversation.

Q. 4. Mr. Garman, in his cross-answer 49, states that the remark that the lost had been found was made by the lady that was with Comfort, if he recollected correctly. Are you certain which of the two made that remark?

[*Objected to as relating to an immaterial matter brought out on cross-examination.*

Respondents' counsel replies that it relates to the accuracy of the memory of Mr. Garman, and especially to the question as to whether his memory is such as to put words into the mouth of one person that were uttered by another.]

A. Comfort himself.

Q. 5. Was there a Mr. R. A. Ross present during that conversation?

A. Yes, sir.

Q. 6. Was he within hearing distance during the conversation about the telephone, or not?

[*Objected to as asking for the mere opinion of the witness.*]

A. Yes, sir; he was within hearing.

Q. 7. During that conversation, did Mr. Comfort say anything about Mr. Ross's father?

A. Not during the conversation of telephones, but at the latter end of his time of being there.

Q. 8. Do you mean that after the conversation about the telephone was over Mr. Comfort spoke about Mr. Ross's father?

[*Objected to as leading.*]

A. Yes, sir; after the subject was changed from the telephone—during that conversation—after the subject was changed.

Recess until 7.30, P. M.

Cross-examination waived by Mr. Storrow.

Examination taken, reduced to writing, and by the witness affirmed and subscribed to before me, this 12th day of June, A. D. 1884.

FRED. M. OTT,
Examiner.

J. EVANS.

DOVER, DELAWARE, JUNE 9, 1884, 3 P. M.

Examination resumed pursuant to adjournment, in the Kent county Court-house, Dover, the Hotel Richardson being closed.

Present, Mr. Storrow for complainants, and Mr. Hill for respondents.

THOMAS DRAPER, *being produced, sworn, and examined, saith:*

Examined by Mr. Hill:

I am the same Thomas Draper who heretofore testified for respondents in this case, [see respondents' printed record, page 1164.]

Q. 1. Since you gave your deposition in this case, in March, 1882, have you been requested, either by the Bell Telephone Company or by the People's Telephone Company, to search among your books and papers, to see if you could discover any papers or letters, or other written memoranda, relating directly or indirectly to the hydraulic ram which you testified that you and Mr. Kissinger ordered from Daniel Drawbaugh in 1874?

A. Yes, sir, I have, of both companies, or parties representing them-

selves to be from both companies; and by another party, representing the Overland Company.

Q. 2. When your wife and daughter were at Philadelphia this present spring for the purpose of being examined as witnesses in this suit in behalf of the Bell Telephone Company, were you there at Philadelphia with them; and if so, at whose request were you there at Philadelphia with them, and how long did you stay there?

A. I was there at the request of Mr. Comfort—John Comfort, I believe—and, I think, of Mr. Storrow, too. I staid there, I think, two days—it strikes my mind I was there two nights and about two days.

Q. 3. While there were you privately examined or talked with by the counsel for the Bell Telephone Company with regard to the said hydraulic ram and other matters connected therewith, or with regard to the time when you visited Marysville, and went with Mr. George W. Kissinger to Milltown to order said ram?

A. Yes; we had several talks with Mr. Comfort, and one, I believe, with Mr. Storrow—one with Mr. Storrow.

Q. 4. Between the time when you testified at Philadelphia in March, 1882, and the time when you went to Philadelphia with your wife and daughter, at the request of the Bell Telephone Company, this spring, did Mr. Storrow, or Mr. Comfort, or any other agent or attorney of the Bell Telephone Company, ever visit you and talk about the said hydraulic ram, or make any examination of your papers, letters, or other written memoranda?

A. Yes, sir.

Q. 5. How often; and which of these gentlemen was it?

A. Well, I don't know that I can answer that question positively. I know Mr. Storrow was down once, if no more, and I think Comfort was here twice, if no more. I was going to say that both of them wished me to hunt and search among my old papers. Mr. Comfort went down to my farm, and searched among my old papers there; I don't think he found anything; and he requested my wife, and daughter, and myself, and my son, also, to search among my old papers and try to find something relating to it, and we have done so.

Q. 6. Did you give Mr. Comfort liberty to search among your papers to find anything that might be there relating to the ram, or tending to fix the time when the ram was ordered?

A. I did; I think I gave him a written order on my tenant to let him search among some old papers that were in a closet there. I may

possibly be mistaken in that, but I don't think I am. I know I gave one or two orders, and told them they might look and see if they could find anything there; the companies were all alike to me. I mean one or two orders to different persons. I think I gave them an order, and I think I gave an order once to the Overland Company, and I think I gave Mr. Fenn an order once, to go and look.

Q. 7. Since your wife and daughter came home from Philadelphia from testifying, this spring, has anybody been to see you on behalf of the Bell Telephone Company? If so, who?

A. I think not; Mr. Comfort has been down once or twice, but I don't think he came to see me, or interrogated me with reference to it in any way.

Q. 8. Did he come to your house and talk with other members of your family about it?

A. He has been at my house, but I don't know anything about the conversation. I don't know that he said anything about it since to them there.

Q. 9. You have testified that you were at Philadelphia at the time your wife and daughter were there to testify in this case this spring; have you, since you returned from Philadelphia, made any further search for papers or letters relating to said ram?

A. Yes, sir; I have.

Q. 10. Did you discover anything relating to the subject? If so, what?

A. Nothing that I considered of any importance.

Q. 11. Have you ever discovered any letter or letters among your papers or books—mentioning the ram or anything relating to it?

[*Question objected to; if any letter exists it should be produced, that it may speak for itself; and any attempted construction of it, or attempted statement of its contents, should not be put into the question; question also objected to as leading in that respect.*]

A. Since I was in Philadelphia, do you mean? I think not.

Q. 12. If you have any such letter here, which you have discovered at any time, will you please produce it?

[*Same objection.*]

A. I have two letters; one I found and one John found, I think, after they were there. I know I had one that John found, but it didn't have any date—the date was blotted; but it didn't refer to anything but twenty-

selves to be from both companies; and by another party, representing the Overland Company.

Q. 2. When your wife and daughter were at Philadelphia this present spring for the purpose of being examined as witnesses in this suit in behalf of the Bell Telephone Company, were you there at Philadelphia with them; and if so, at whose request were you there at Philadelphia with them, and how long did you stay there?

A. I was there at the request of Mr. Comfort—John Comfort, I believe—and, I think, of Mr. Storrow, too. I staid there, I think, two days—it strikes my mind I was there two nights and about two days.

Q. 3. While there were you privately examined or talked with by the counsel for the Bell Telephone Company with regard to the said hydraulic ram and other matters connected therewith, or with regard to the time when you visited Marysville, and went with Mr. George W. Kissinger to Milltown to order said ram?

A. Yes; we had several talks with Mr. Comfort, and one, I believe, with Mr. Storrow—one with Mr. Storrow.

Q. 4. Between the time when you testified at Philadelphia in March, 1882, and the time when you went to Philadelphia with your wife and daughter, at the request of the Bell Telephone Company, this spring, did Mr. Storrow, or Mr. Comfort, or any other agent or attorney of the Bell Telephone Company, ever visit you and talk about the said hydraulic ram, or make any examination of your papers, letters, or other written memoranda?

A. Yes, sir.

Q. 5. How often; and which of these gentlemen was it?

A. Well, I don't know that I can answer that question positively. I know Mr. Storrow was down once, if no more, and I think Comfort was here twice, if no more. I was going to say that both of them wished me to hunt and search among my old papers. Mr. Comfort went down to my farm, and searched among my old papers there; I don't think he found anything; and he requested my wife, and daughter, and myself, and my son, also, to search among my old papers and try to find something relating to it, and we have done so.

Q. 6. Did you give Mr. Comfort liberty to search among your papers to find anything that might be there relating to the ram, or tending to fix the time when the ram was ordered?

A. I did; I think I gave him a written order on my tenant to let him search among some old papers that were in a closet there. I may

possibly be mistaken in that, but I don't think I am. I know I gave one or two orders, and told them they might look and see if they could find anything there; the companies were all alike to me. I mean one or two orders to different persons. I think I gave them an order, and I think I gave an order once to the Overland Company, and I think I gave Mr. Fenn an order once, to go and look.

Q. 7. Since your wife and daughter came home from Philadelphia from testifying, this spring, has anybody been to see you on behalf of the Bell Telephone Company? If so, who?

A. I think not; Mr. Comfort has been down once or twice, but I don't think he came to see me, or interrogated me with reference to it in any way.

Q. 8. Did he come to your house and talk with other members of your family about it?

A. He has been at my house, but I don't know anything about the conversation. I don't know that he said anything about it since to them there.

Q. 9. You have testified that you were at Philadelphia at the time your wife and daughter were there to testify in this case this spring; have you, since you returned from Philadelphia, made any further search for papers or letters relating to said ram?

A. Yes, sir; I have.

Q. 10. Did you discover anything relating to the subject? If so, what?

A. Nothing that I considered of any importance.

Q. 11. Have you ever discovered any letter or letters among your papers or books—mentioning the ram or anything relating to it?

[*Question objected to; if any letter exists it should be produced, that it may speak for itself; and any attempted construction of it, or attempted statement of its contents, should not be put into the question; question also objected to as leading in that respect.*]

A. Since I was in Philadelphia, do you mean? I think not.

Q. 12. If you have any such letter here, which you have discovered at any time, will you please produce it?

[*Same objection.*]

A. I have two letters; one I found and one John found, I think, after they were there. I know I had one that John found, but it didn't have any date—the date was blotted; but it didn't refer to anything but twenty-

five dollars that was sent me by Kissinger; that is, his name was to it. There was nothing about the ram in it.

[*Witness produces and hands to respondents' counsel a letter.*]

Q. 13. Do you know Mr. George W. Kissinger's handwriting?

A. I think so; I have seen quite a good deal of it.

Q. 14. In whose handwriting is this letter which you have produced here and handed to respondents' counsel?

A. I think it is Mr. Kissinger's. He writes not always the same hand, but I think it is his.

Q. 15. Tell us, as near as you can, when and where you found this letter which you have produced here, and how you came to find it?

A. I have been several times requested to search my papers by the different companies, and I have searched; and that is the way I found it. I was searching for papers. I can't say just when I found it. I don't know the date. It was sometime since I have been searching for papers —some time since last fall. I found it in an old day-book. I think we have searched every book and paper about the premises; I think we have.

Q. 16. When did you first inform the representatives of the People's Telephone Company about this letter which you had discovered? Was it before, or since your wife and daughter came home from testifying at Philadelphia?

A. Since; I think so, if I am not mistaken.

Q. 17. Have you recently shown this letter to your former tenant, Mr. George W. Kissinger? If so, what, if anything, did he say about the handwriting of the letter?

[***Objected to because it calls for hearsay, and because it appears to be a part of a preconcerted attempt on the part of the defendants to derive a benefit from Mr. Kissinger's alleged recent statements relating to a newly-discovered paper alleged to be written by him, without calling him as a witness and giving him an opportunity to explain, or state the surrounding circumstances, if any such explanation or statement of circumstances would have any bearing upon the matter involved.***]

A. I don't know that he said anything about the handwriting. I showed him that letter in connection with all the letters that I had—showed them all to him. He said they were his letters; he remembered them. There was one long one that he said he didn't remember, at first. He read it over a second time, and then said he did remember it. That one written in 1875, with reference to the piping and peach trees—he said

that he particularly did remember that one, [referring to the letter which witness just handed to respondents' counsel in answer 12.]

[*Respondents' counsel offers in evidence the letter last mentioned by the witness, to be marked "Exhibit Kissinger-Draper letter, May 30th, 1875," said letter being as follows:*

"May 30 75

Marysville

Mr. Draper Dear Sir i receved your Letter about the pipse now they sey non will do but iron pipe to go up hil now i can get som god ole pipe here now i want you to com up soon we got the pech tres al trimd and look nice wat sho you som farmin this year rite sone no more

Yours Truly

Geo. Kissinger."]

Q. 18. In this letter of May 30, 1875, Mr. Kissinger speaks of having received your letter about the pipes; if you remember the circumstances which led you to write to Mr. Kissinger about the pipes, will you please state them?

A. I don't remember of writing to him at all. I suppose I must have written. When I was at Marysville in 1875, Mr. Kissinger had some small saplings cut and hauled up, that he said were for the piping to run the water from the spring to the ram. I told him they would not do; that by the time he bored them there would be nothing but sap left, and I didn't wish to pay for putting in piping of that kind. I told him he could use them for something else, or had better use them for something else—something to that effect—and should cut larger ones. I then told him I should be in Philadelphia a day or two as I came home, and I would see if we couldn't get some terra-cotta piping that would answer the same purpose, and, it might be, as cheaply as to bore the chestnut logs. During my stay in Philadelphia I went over to Camden to order some decking for a new schooner that I was building. On the street, just after I went over Market street ferry, a square or so up, I saw a pile of terra-cotta piping laying on the pavement. I went in and inquired about it—as to whether it would do, or answer my purpose—told them what I wanted it for. They told me that it would not answer, that it would not bear a pressure; it would not answer to run up hill—that is, much up hill—that it might raise a foot or so, or perhaps a few feet, or would do to run on a level or down hill. I told them what sort of a hill my house was on. I did not buy the piping, but suppose I must have written to Kissinger about it, from the tone of that letter. I didn't know, at the time, the height of the hill my house was on, but told them it was

a pretty high hill, and they told me that the piping would not answer to go up to the house, but would answer to run from the spring to the ram.

Q. 19. What schooner were you building at that time that caused you to go to Camden, New Jersey, to order decking?

A. I was building a little schooner that we called the "Annie E. Draper," named after my wife.

Q. 20. At or about what time did you make that visit to Camden to order the decking?

A. I think it was about the 17th or 18th of April, or 16th or 17th, or something like that, of 1875. It might have been a day or so earlier than that.

Q. 21. Are we to understand that you made that visit to Camden, New Jersey, while on your way home from a visit to Marysville?

A. Yes, sir.

Q. 22. And this conversation with Mr. Kissinger about the terra-cotta pipes, and so forth, took place while you were on that visit to Marysville?

A. Yes, sir.

Q. 23. Did you have a co-partner in the building of that schooner, "Annie E. Draper?"

A. Yes, sir.

Q. 24. Who was it?

A. Edmund Bailey.

Q. 25. Was he your co-partner in any other branch of your business? If so, what?

A. Yes, sir; we were partners in the business of manufacturing phosphate. We commenced the phosphate business in the fall of 1873—September, I think. We commenced to build the vessel in the fall of 1874, along in the early part of November; I think the day after the big election in the fall of 1874 we commenced cutting timber.

Q. 26. Do you mean the day after the Delaware State election?

A. Yes, sir.

Q. 27. If you have here any book containing memoranda or accounts relating to the cutting of timber for that schooner, "Annie E. Draper," will you please produce it and point out such memoranda or accounts?

A. Yes, sir; I produce it.

[*Witness produces a small paper-covered memorandum-book—one of Dr. Pierce's pocket memorandum-books.*]

The entries in this book are in my handwriting, made in the book at

the time, as the work was done in the woods. I attended to the vessel work, and Mr. Bailey to the phosphate, mostly. I think the entries in the whole book relate to the vessel. There may possibly be something in there that don't relate to the vessel. I didn't search it closely, but I think it all relates to the vessel. The entries of the work on the vessel begin on November 4, 1874.

[*Respondents' counsel requests the Examiner to copy upon the record at this point the first page of said book. The Examiner copies said page, as follows:*

Memoranda of Work on Vessel

Nov. 74		
4	Chas. Russ,	¾ day
	Henry Salisbury,	¾ "
5	Chas. Russ,	1 "
	Henry Salisbury,	1 "
	Joshua Bostic,	½ "
6	C. Russ,	1
	H. Salisbury,	1
	J. Bostic,	1
7	C. Russ,	½
	H. Salisbury,	½
	J. Bostic,	½
	Geo. Deville,	1
8	Sunday,	
9	Monday,	
	C. Russ,	1
	H. Salisbury,	1
	C. Russ, Jr.	

33]

[*Witness continues:*]

C. Russ, junior, was a son of Chas. Russ. Most of these men were colored men, but Joshua Bostic was a ship's carpenter, who worked on the schooner until she was almost if not quite completed. Bostic moved down to the ship-yard and stayed there. He was a drinking man, and lost considerable time, but he worked off and on. The entries above copied are for work done in the woods.

Q. 28. Please look at the bill now handed you, and state what it is, and what the materials specified in it were obtained for, and when they were obtained.

A. That is a bill of iron bought of Cresson & Ross for that schooner. The bill is dated December 10, 1874. The upper figures there, $94.94, is the amount of their bill at that time. The other figures, which are in pencil, are in my handwriting, and I think I added them in to sum up

the whole amount of the bills that I bought from them while building the vessel; I don't know, but I think that is it.

Q. 29. Does this bill of iron of December 10, 1874, refer to the first bill of iron which you bought for that vessel?

A. Yes, sir.

[*By consent, the following copy of said bill is put in evidence in lieu of the original, the original bill to be marked for identification and left in the hands of Mr. Draper, to be produced if called for.*

Cresson & Ross, Importers, and Dealers in Foreign and Domestic Iron and Steel, 343 S. Front St., & 342 S. Water St., Philadelphia.

Philadelphia, *Dec., 10, 1874.*
Messrs. Draper & Bailey
Bought of Cresson & Ross
Successors to Jonathan Leedom & Sons,
343 S. Front St. & 342 S. Water St.

TERMS.

Bars.	Bdls.			
127	$\frac{5}{8}$	Round Iron		
46	$\frac{3}{4}$	" "	3000 @ $2\frac{3}{4}$, ...	82.50
1 keg 5 in spikes			171 @ $5\frac{1}{2}$, ...	9.44
1 Cast Steel Sledge			@	2.25
		Cartage, ...		.75
				94.94
		Recd. Payment,		36.30
		Cresson & Ross.		13.53
				144.77]

Q. 30. About when was the building of the schooner "Annie E. Draper" completed?

A. I think we launched her in the latter part of August, 1875; perhaps about the 20th; I don't know. She was rigged about the middle of September, I think; she was rigged after she was launched. She was fitted out and finished at Philadelphia. We put her spars on and part of her load, and had her cabin furniture and fixtures done in Philadelphia.

Q. 31. Please look at the bill which I now hand you and state what it is.

A. This is Brown & Taylor's bill of rigging for that vessel. This rigging was fitted out in Philadelphia, and they sent a man down here to put it on. I didn't pay it until I went up to Philadelphia with the vessel.

[*By consent the following copy of said bill is put in evidence in lieu of the original, the original bill to be marked for identification and left in Mr. Draper's hands, to be produced if called for:*

"Rigging and Building Work Punctually Done.

Philadelphia, Sept 20, 1875.

Schr. Anna E. Draper & Owners

To Brown & Taylor, Dr.

Rigging Loft, No. 302 South Delaware Avenue,
1st Door Below Spruce Street.

Chas. C. Brown, Broadway, bel. Jackson St. Camden, N. J.	John C. Taylor, 523 Queen St.
July 16 For fitting Rigging By contract,	$45.00
Aug. 30 " Rigging said Schr.	
" To 1 Days work, $4.00 per day	" 4.00
31 " 1 " "	" 4.00
Sept 1 " 1 " "	" 4.00
2 " 2 " "	" 4.00
" Tar &c	" 4.70
	65.70
Sept 18, Recd on account	41.00
Balance due	$24.70

Recd Payment in full.

Brown & Taylor."]

Q. 32. In the letter—Exhibit Kissinger-Draper Letter, May 30, 1875—I observe that Mr. Kissinger states: "We got the pech tres al trimd and look nice;" do you know what that refers to?

A. Why, it refers to the trimming of the peach trees on the farm. When I was there in April, I rather blamed him for not trimming the peach trees the year before; and we went out into the peach-orchard, and I took a saw and showed him how they must be trimmed, and told him how to plow and cultivate them. He said he didn't know how to work peach trees. I think I trimmed a whole row for him. I thought I did it with a hatchet, but Kissinger says I did it with a saw—that he took a saw out, and I showed him with a saw.

Recess until 7.30, P. M.

Q. 33. In your former deposition you referred to a visit which you made to Marysville, during which you and Mr. Kissinger went to Milltown together and ordered the ram. The time when that visit was made is a matter which has caused some controversy in this suit since you have testified. You have now had a long time to think over the matter, and have, if I understand you, been interviewed by both parties in regard to the ram, and at different times; and I will now ask you again in what year that visit of you and Mr. Kissinger to Milltown took place?

A. Some time in the year 1874. I can't say precisely what time but I know it was before I commenced to build the vessel; and I know that from the fact that Mr. Kissinger and I were up in the woods together, and I was looking at some crooked white oaks that were there, and I remember, distinctly, telling him that I wished I had them at home, as they would be of some use to me there, and there was none there. If my memory serves me right, I think I told him that one of them would make a breast-hook. I know it was a crooked tree, and he remarked that he didn't know what we could get out of it.

Q. 34. How long did you contemplate building that vessel, the "Annie E. Draper," before you commenced getting out the timber for her on November 4, 1874?

A. I don't know that I could say precisely. I know we first talked about building a large scow to scow our phosphate along to the various landings. We talked about having the scow to bring up king-crabs in—we get our ammonia out of them. Then we changed from a scow to a vessel, because we thought that would answer for all purposes, while a scow wouldn't. We could take her on to Philadelphia and then bring back our materials for the manufacture of phosphate, and take our phosphate in her to different points. I think it was somewhere about harvest that we changed to the idea of getting a schooner. I know we built a much larger vessel than we at first contemplated building. First we thought we would build a vessel that would carry about forty tons. I think the "Annie E. Draper" carries from sixty-five to seventy tons. I think her custom-house tonnage is about forty-six or forty-seven tons. They generally carry—those flat vessels—about a third more than they measure.

Q. 35. You have testified that when you were at Marysville in April, 1875, Mr. Kissinger had some small saplings cut and hauled up, that he said were for the piping to run the water from the spring to the ram; were those saplings cut before your visit of April, 1875, or during your visit?

A. They were cut before. They were lying up near the barn wall —six or seven or eight of them. I didn't count them particularly, but that is what he said they were for. I don't think there was half enough to run the piping that distance, if they would have answered at all.

Q. 36. If I understand your previous testimony correctly, you condemned them because you thought them too small for the purpose: is my understanding correct, or not?

[*Objected to as leading.*]

A. It is correct, sir.

Q. 37. At any time when you were at your farm near Marysville during Mr. Kissinger's tenancy of it from April 1, 1874, to April 1, 1880, did you ever see there an auger, such as is used for boring wooden pipes?

A. Yes, sir.

Q. 38. When did you see that auger there?

A. I feel sure in my mind that I saw it there during my visit in April, 1875; I don't think I was there any more until February, 1877. It possibly might have been then that I saw it, but I don't think so. I know at the time I did see it Kissinger said it was in some way out of order; I don't know what the difficulty was with it.

Q. 39. Do you recollect whether or not, at the time when you saw it, any mention was made as to whose auger it was?

A. I think he said it was Keller's auger.

Q. 40. When you were up to your farm in April, 1875, was anything said or done about your accounts with Kissinger?

A. Yes, sir; we run over the account for 1874, up to the first of April, 1875, and entered it in a small pass-book or diary that I carried in my pocket.

Q. 41. Please look at the paper which I now hand you and state what it is, whose handwriting it is, and when and where it was made, if you remember.

A. Yes, sir; I remember—I don't remember when that was made nor where it came from, but I know that it is my handwriting. It appears to be for seven dollars cash that Kissinger paid me, and a barrel of apples and a box of dried fruit. It is dated February 22d, 1877, to cash, $7.00. I suppose that is cash paid to me—barrel of apples and box of fruit shipped March 14, 1877. I know I wrote it, but I don't know when I done it. Some of our people found it while they were searching for papers and letters. I know when I was up at Kissinger's he said he was going to ship me some dried fruit; the fruit was mostly dried apples and cherries.

[*Paper put in evidence, to be marked "Exhibit Draper Memorandum." The paper is copied by the Examiner as follows:*

"at Kissinger's
Feb. 22— 1877
to cash $7.00.

Bbl apples and box dried fruit shipped
the 14 Mar — 1877."]

Q. 42. You mentioned a little while ago that you were at Marysville in February, 1877; do you remember at what time in February you were there?

A. No, sir; I don't remember precisely at what time I was there, but my impression is I was there at that date—February 22, 1877; I only think so from that memorandum, because it says, "At Kissinger's, Feb. 22, 1877." I know that when I was up at Kissinger's he promised to send me some apples; we had none at home here. My impression is that I made that memorandum when the apples and dried fruit came, thinking that I would settle with him when I went up to Marysville He made no charge for them. He wrote a letter when he sent the fruit, but I don't know what has become of that. I went to the depot for them myself in a Dearborn wagon—a small spring-wagon.

Adjourned until June 10, 1884, at 10, A. M.

JUNE 10, 1884.

Examination resumed.

Present, same counsel.

Examination of Thomas Draper by Mr. Hill continued:

Q. 43. In your fortieth answer you say, in substance, that when you were at Marysville in April, 1875, you and Mr. Kissinger ran over the rent account for 1874, up to the first of April, 1875, and entered it in a small pass-book or diary that you carried in your pocket; have you that diary or pass-book here, and if so, will you please produce it?

A. That is the book, [producing a small, black, leather-covered diary containing a printed calendar and diary for the year 1859.]

Q. 44. Will you please point out in this diary the rent account for 1874 between you and Mr. Kissinger?

A. That is it, sir; from the top down to there—to the red line next below the figures 69.32. This is in my handwriting, and was entered by me at the time of my visit there in April, 1875. That is the time that was put down—April 13, 1875. [Referring to a date immediately below said red line.]

Q. 45. Does this same book contain your rent-account with Mr. Kissinger for the year 1877 or not?

A. Yes, sir; it contains the rent-accounts for 1874, 1875, 1876, and 1877. I can't say when those last three settlements were made. I was not up there in 1876, but I was there twice in 1877 and once in 1878. I know we looked over the rent-account several times, but we only made one final settlement after the first settlement of April, 1875. That final settlement was in 1878, and he gave me three notes for the amount due me—three notes on a bank in Harrisburg; I forget which one of the banks now, but I have one of the notes; I think it was the First National Bank. Two of those notes he afterwards paid, and the other I have yet, unpaid.

Q. 46. Will you please point out to the Examiner the rent-accounts between you and Kissinger for the years 1874, 1875, 1876, and 1877, as they appear in this diary or pass-book, in order that the Examiner may copy them upon the record?

[*Complainants' counsel objects to the question; first, upon the ground that the book itself is the only competent evidence of its contents; second, upon the ground that if its contents are spread upon the record it will be necessary for the Examiner to determine what is written there, which he ought not to do in view of the character of the entries and the writing.*]

A. Yes, sir; here they are [indicating]. These pages were photographed at Philadelphia by complainants' counsel.

The Examiner copies the entries indicated by the witness, as follows; all the entries are in pencil:

"74

			y.		
		George W. Kissinger		Rent	200.00
Apl 74					69.32
98	bus	lime	11.75		
250	"	Gas lime	8.10		130.68
		lumber	.25		
125		lime	15.62		
300		Gas lime	8.60		
		Cash on rent	25.00		
			69.32		
x.					x.

y.

x		y	x
Apl 13, 1875			
250 bus lime	31.25	Rent	200.00
Cash	25.00		
Cash	25.00		105.25
	81.25		25.00
Tax	24.00		130.25
	105.25		
Making hog pen	25.00		69.75
	130.25		

x		y	x
Apl 76			
125 bus lime	15.62	Rent	200.00
250 bus "	31.25		54.18
Nob and key	.31		145.82
Expences of Ram	60.00	Tax pd Simon Kreiser	24.00
Cash	7.00		121.82
	114.18		

The figures "47.18" appear to have first been written and partially rubbed out, and the figures "60.00" written over them. All the entries are in pencil.

Recd of B. Bush	8.50	
" " "	9.50	
Bro Gadsen	14.00	Diles 273 S. 3rd St.

x		y	x
Recd of G. Kissinger for	1877.		
		Rent	200.00
25 bus lime	3.00		141.84
For work on Poarch and observatory	103.50		158.16
E. Stotter	4.50	Load lime	2.75
Borough Tax	18.00		155.41
Borough Tax '77	15.84		
	141.84		

In the above account there are traces of figuring, now almost obliter-

ated, under the figures "2.75" in the right-hand page. The figures appear to have been "2," "6," and "8." There are also faint traces of other figures below those above mentioned, but they are too faint for the Examiner to determine what they are. The "2" is in the hundreds column, the "6" in the tens column, and the "8" in the units column, now occupied by the figure "2."

Complainants object to the statement of the Examiner, upon the ground that it is a matter beyond his jurisdiction and is not correct. Complainants say that the partially-rubbed out figure "6," above referred to, is plainly legible; that the mark referred to as "8" shows a mark not decipherable, and that the place where the "2" is said to be shows a little mark or point, but nothing resembling a figure.

Respondents' counsel object to the above objection, so far as it raises the question of the Examiner's jurisdiction, for the reason that complainants' counsel himself invoked the exercise of that jurisdiction by really calling the Examiner's attention to the faint traces of figures under and near the figures copied by the Examiner in the account, and especially by directing the Examiner's attention to the remains of the figure "6," and requesting him to make a note that that figure appeared, in response to which request the Examiner declined to certify that that was the only figure of which traces are yet legible, but very properly did certify all the figures which were visible to him. And respondents' counsel objects to the statement of complainants' counsel about the partially obliterated figures, for the reason that such statement is manifestly incorrect in ignoring everything but the figure "6"; the figure "2" being plainly visible to the naked eye of respondents' counsel at three feet distance from the page of the diary on which it appears.

Complainants' counsel reply that he objected to the question on the ground that it called upon the Examiner to decide what was written in the book; that when, in spite of that objection, the Examiner proceeded to make a copy, he called his attention to points in which what he intended for a copy did not correctly represent the original, which is the only competent evidence.

Complainants' counsel also, de bene esse, requests the Examiner to state that where the figures "155.41" are written, there were originally some other figures, to wit: "9" in the tens and "8" in the units columns under the figures "5" and "5" respectively. The Examiner so certifies.

The Examiner notes that the first three sets of entries, headed "Apl 74," "Apl 13, 1875," and "April, 1876," respectively, occupy two entire pages of the book—facing each other—the credits [lime, etc.,] being on one side

of the page, and the charges, rent, &c., on the other; and that the fourth set of entries, consisting of the words

"Recd of B. Bush	8.50	
" " "	9.50	Diles 373, S. 3rd St."
Bro. Gadsen	14.00	

are stated by the witness to have no reference to the Kissinger account, but appear at the top of the two pages immediately succeeding the first three sets of entries, and are immediately followed by the fifth set of entries, commencing with the words "Recd of G. Kissinger for 1877;" there being four sets of Kissinger entries, to wit: the first set headed "Apl 1874;" the second set headed "Apl 13, 1875;" the third set headed "Apl. 1876," and the fourth set headed "Recd. of G. Kissinger, for 1877." Also that the double, horizontal, parallel, lines marked by the Examiner "x, x," between each set of entries are in the book, printed lines in red ink, dividing the book into days, in the manner of a diary, while the verticle lines, marked by the Examiner "y, y," represents the dividing lines, or meeting edges between opposite pages of the diary.]

Recess until 2, P. M.

[*Respondents' counsel offers in evidence the diary from which the above copies have been made, the same to be marked "Exhibit Draper Diary." The witness states that said diary contains some written memoranda that may be hereafter of value to him; and he lends the book, for the purposes of this case, with the understanding that it shall be returned to him after the case is over. The entries of which copies have been made upon the record, are to be found in that part of the diary which was printed for the month of February, 1859, beginning at the printed words, "February, Friday 18, 1859," and are all included within the four pages immediately following those words.*]

Q. 47. By reference to the diary which has just been put in evidence, I find that you have credited Mr. Kissinger in the year 1877, for work on porch and observatory, $103.50; was that work on the porch and observatory of the dwelling-house in which Mr. Kissinger lived on your farm?

A. Yes, sir. He built the porch new; the observatory, when we first built the house, was an open one. He inclosed it, put a roof over it, and glass windows around it.

Q. 48. In the account in your diary for the year 1876 I find the fol-

lowing item, to wit: "Expenses of ram 60.00," on the credit side of the book; do you recollect when that was written in the diary?

A. I do not; I know it was written when Mr. Kissinger and I settled. All of those accounts were presented by him in the form of bills or otherwise, and at the time, I think, fully satisfactory to Mr. Kissinger and myself. My opinion is that they were entered either in 1877 or 1878.

Q. 49. I observe that, although the $60 are entered on the credit side of the account for 1876, yet they were not taken out of his rent on the debit side that year, but the other entries on the credit side, amounting to $54.18, were taken out on the debit side; do you remember how that happened?

A. I do not. I know that when Mr. Kissinger and I made a final settlement in 1878, there was a little dissatisfaction with him about my account; it amounted to too much—that is he thought it was too much. He thought I ought not to charge him interest on those rents that were not paid up regularly. I told him I didn't want to be out of the way—do anything wrong—or something to that effect, and would leave it to two men; he might choose them both if he wished to. We so referred it, and, I think, Mr. Al. Seidel and Mr. Herman Eppler settled for us in Eppler's store, and they threw off, if I remember rightly, a part of my account. I think the amount he was to pay me was $314.00. He gave it to me in three notes; two have been paid and one has not been paid. This was in the latter part of 1878, I think. Those notes were never presented to the bank; and I think for the year of 1878 the accounts were entered on a slip of paper in the office where we settled, and not on the pass-book—not on my diary.

Q. 50. The rent from the first of April, 1878, until the time when Kissinger moved away, about the first of April, 1880, was not a money-rent, if I am informed correctly, but was a portion of the produce of the farm; is my information correct?

A. The rents for 1874, 1875, 1876, and 1877, up to the first of April, 1878, were money-rents—$200 a year. From the first of April, 1878, up to the first of April, 1880, he gave me a share of the produce of the farm, which will appear from a lease, I think, in the hands of Eppler; I am not certain.

Q. 51. Were you aware that Mr. Eppler had sold that lease to the Bell Telephone Company?

[*Objected to as a misstatement of Mr. Eppler's testimony and of the proof about it.*]

A. No, sir; I supposed he had it yet unless he had destroyed it after Mr. Lewis rented the farm.

Q. 52. In their various interviews with you, have the representatives of the Bell Telephone Company, or any of them, ever labored to convince you that the ram was put in on your farm in the fall of 1878?

A. I can't say that they have labored very much to do it, sir.

Q. 53. Have they shown you the entries in Wagner's book, or the entries in the railroad books, or copies of them, or told you what they were?

A. Well, Mr. Comfort told me that he had no doubt that I was sincere in my first testimony in reference to the time that the ram was put in, but told me he could soon show me how easy it was for a man to be mistaken. And then he showed me a freight bill—I think of the Pennsylvania railroad—on which it appeared that the piping was shipped to Marysville in 1878, and he said that was the identical piping that was used with the ram. And I think at the same time he showed me a couple of receipts for the pay for it, or an order to let Kissinger have it, or something of that kind. I didn't take it as an inducement to try to make me believe I was wrong, but as an offer to try to show me that I was wrong. I told him I never intended to designate any time in which the ram was put in, but that it was my opinion at the time I first gave my testimony that it might have been put in in the latter part of 1875; but that I had since changed my mind, and from circumstantial evidence I was confirmed in the opinion that it was put in at a later date; but that as to my visit to Drawbaugh's shop, I was positive that that was in 1874, as I testified before, and that there was no mistake about that; and so I have always told all the parties.

Q. 54. When and where was this conversation with Mr. Comfort?

A. In my office in Dover; I can't tell exactly when; it has been, perhaps, a month or so, or a couple of months—perhaps a little more; I don't remember; I didn't take any account of the date. It was on one of his visits to Dover. He has been down two or three times lately. I know it was before my wife and daughter went to Philadelphia.

Q. 55. When you went to Philadelphia with your wife and daughter, did you expect to be examined as a witness for the Bell Telephone Company?

[*Objected to upon the ground that the witness has no way of knowing what the intentions of the Bell Company were, and, therefore, that his answer would be immaterial.*]

A. I can't say that I did, sir. I don't think any of us were summoned. I know I was not. We went up at the request of Mr. Comfort. He said he was employed by the Bell Telephone Company, and that we should be well taken care of and kindly treated, and we were very kindly treated. Mr. Comfort talked with me a good deal, and I told him I didn't think I could do them any good, and I didn't want to do them any harm; but my wife and daughter didn't want to go unless I would go with them, and I consented to go along.

[*The whole deposition and each question and answer objected to as incompetent at this stage of the case.*]

Cross-examined by Mr. Storow, de bene esse:

Cross-Q. 56. Your present recollection and belief is that it was in 1878 that the ram was put in; is it not?

[*Objected to on the ground that the witness has already substantially indicated that he has no recollection as to the time when the ram was put in, and that he was not there when it was put in; and the question is an attempt to combine the word "recollection" with the word "belief," so as to induce the witness to answer as to his belief as though it were also his recollection; and because the witness' belief is not competent evidence in this case, especially after his interviews with Mr. Comfort, and Mr. Comfort's exhibition to him of the papers referred to in the witness' 53d answer, and Mr. Comfort's statements, also referred to in said answer.*]

A. My impression is, now, that it was put in either in 1877 or 1878.

[*Answer objected to by Mr. Hill as not evidence.*]

Cross-Q. 57. Your recollection is that you never saw it on the farm until you went there with your daughter, Miss Jennie Draper, in the fall of 1878; is it not?

[*Objected to because the witness could not have a recollection that he never saw it, but, at the most, only a want of recollection of seeing it; and the question is carefully framed to mislead the witness in his statement of facts.*]

A. I can't say positively whether I first saw it when I went with my daughter in 1878, or with my wife in the fall of 1877.

Cross-Q. 58. I call your attention to the entries in the memorandum-book referred to in your answer 46. The first set of entries, headed "April, '74," refers to the year beginning April 1, 1874, and ending April 1, 1875; does it not?

A. Yes, sir; I think so.

Cross-Q. 59. And in the same way, the set beginning "April, 1875," refers to the year beginning April, 1875, and ending April, 1876; does it not?

A. Yes, sir.

Cross-Q. 60. And the set beginning "April, 1876," refers to the year beginning April, 1876, and ending April, 1877, I suppose?

A. Yes, sir.

Cross-Q. 61. And the fourth set, beginning "April, 1877," refers to the year beginning April, 1877, and ending April, 1878, also; does it?

A. Yes, sir; the first of April. I suppose each year ended with the last day of March.

Cross-Q. 62. The third set, headed "April, 76," has for its first three items on the credit side, the following:

"125 bus. lime	$15.62
250 bus. "	31.25
Nob & key,	.31"

And underneath them there is a line drawn, and the old figures, "47.18," are still to be read there; that amount, "47.18," is what those three items add up to, is it not?

A. I presume so, sir.

Cross-Q. 63. Leaving out the "expenses of ram, 60.00," the next item below is "cash 7.00;" that added to the "47.18" makes $54.18; does it not?

A. I have added all the items referred to in the last two questions, and they make $54.18.

Cross-Q. 64. On the rent side of the account, I find that from the year's rent, $200.00, there are deducted: first, $54.18, and then "tax paid Simon Kreiser, $24.00, stating the balance, as there written, of $121.82. I infer from that, that at the time those entries on the credit side were made, you had not added in the $60.00, nor entered it on that book; is that the fact?

[*Objected to, so far as the expression "nor on that book" is concerned, on the ground that the question states the mere inference of counsel, and asks for the mere inference of the witness.*]

A. I don't think we had at that time; but the best of my recollection is, that Mr. Kissinger said he had forgotten about the expenses of the ram, and then about the seven dollars; and then he brought in a tax receipt from Kreiser, and had that put down. We made no final settlement at that time. The entries are added up correctly on each side, but at the last it is not deducted out—the $114.18 is not deducted from the 121.82. I was there a couple of days, and Mr. Kissinger didn't bring in all his accounts at once; he would bring in one item and then another; and we didn't add it all up and take it out, because, I suppose Mr. Kissinger had no money to pay me at the time, and so the matter, was left. It was all satisfactory to me at the time, and I think Mr. Storrow wrote to me that Kissinger had said that it was satisfactory to him, or something to that effect.

Cross-Q. 65. As the $7.00 was deducted out, and as the $24.00 tax was deducted out, while the $60.00 for the ram was not deducted out on that book, I infer that the $7.00 and the 24.00 were written, and taken out, before the $60.00 was written there; is not that the fact?

[*Objected to as calling for mere guess-work and not recollection.*]

A. That is not the fact, sir, to the best of my knowledge. I don't know how it was done; I don't remember how it was done. The figures appear there, and they are plain enough to me.

Cross-Q. 66. You have spoken of a settlement which you had with Mr. Kissinger on which he gave you three notes for the total sum of $314.00; do you remember whether this set of entries was made at the same visit to Marysville at which you had that settlement with him?

A. I do not; I don't think they were. I mean by that I don't think it was the same day. Mr. Kissinger would come in to me, and would bring in his accounts to me, and we didn't exactly come together; and I said I would agree to leave the matter to referees, and we did so. And, to the best of my recollection, they advised me to throw off some part of my claim—either a part of the interest, or maybe the whole of it. And then we settled, and he gave the notes.

Cross-Q. 67. I understand that the settlement has always been entirely satisfactory to you and to Mr. Kissinger; I am only concerned to find out some dates for a purpose which neither you nor Mr. Kissinger have any interest in. Did you not find among your papers this spring a sheet of paper with an account drawn off in your own handwriting, and contain-

ing a good many of the items found in these entries in this book? And will you please produce it?

A. I did find a sheet of paper with some entries on it, and with some entries on it that are in this book. I gave it to Mr. Storrow at Philadelphia, and told him he might make any use of it that he saw proper if it would do him any good, and that he might make a copy of it.

Cross-Q. 68. You have the original yourself; have you not?

A. I think I have, somewhere, but I have not got it here.

Cross-Q. 69. I shall have to ask you to get that paper, and also the note of Mr. Kissinger's which you have spoken of as one of those given in settlement; and also the receipt by Simon Kreiser for $24.00 tax.

A. Yes, sir; I will go and look for them now.

[*Witness leaves the examining room, and upon his return says:*]

Here are the three papers, [producing them.]

[*Complainants' counsel put in evidence the said three papers, being the account marked "Complainants' Exhibit Draper-Kissinger Account," the receipt marked "Complainants' Exhibit Kreiser Tax Receipt," and a copy of the note, marked "Kissinger-Draper Note."*

They are as follows:

Draper-Kissinger account, first page:

"For 1874
George Kissinger To
Thomas Draper Dr.

To rent for Farm at Marysville for year 1874,		$200.00
Cr. By 98 bus lime	$11.75	
By 250 bus. gas lime	8.10	
" lumber	.25	
By 125 bus lime	15.62	
By 300 bus. gas lime	8.60	
By cash on Rent	25.00	
	69.32	
Bal due 1st April, 1875		$130.68
Int from 1st Apl 1875 to 1st Apl 1878		23.52
		$154.20

Second page of account:

To Rent for year 1875		$200.00
Cr. By 250 bus lime	$31.25	
By Cash on Rent	25.00	
By " " "	25.00	
By Cash pd for tax	24.00	
By making hog-pen	25.00	
		130.25
Bal. due for year 1875		69.75
Int from 1st April 1876 to 1st. Apl, 1878,		8.37
		78.12
To Rent for year 1876,		$200.00
Cr. By 125 Bus lime	15.62	
" " 250 Bus lime	31.25	
" " Nob. & key	.31	
" " Cash	7.00	
		54.18
April 1, 1877, Bal due for year 1876,		145.82
Cr. By 25 Bus lime	3.00	
Work on Poarch & Observatory	103.50	
Pd. Mrs. Stotter,	4.50	
Borough Tax	18.00	
		128.00
		17.82
Int one year		1.06'

Third page of account:

" To Rent for year 1877, $200.00"

Fourth page of account:

Whole amt. of Rent due.	Will be due me April 1, 1878.
For year 1874,	$154.20
For year 1875	78.12
For year 1876	19.88
For year 1877	200.00
	$452.20

The tax receipt is as follows:

"Rec. Marysville Dec 18th, 1877, of Geo. Kissinger twenty fore dollars for county tax for Thomas Draper in full for the year 1876.
$24.00 Simon Kreiser Collector"

The Kissinger-Draper note is as follows:

Farmers' Bank, Harrisburg, Pa.

"$100.00. Harrisburg, Pa., *Nov. 19th, 1878.*

Three years after date *I* promise to pay to the order of *Thomas Draper*, at the Farmers' Bank, *One hundred* $\frac{00}{100}$ dollars, without defalcation for value received; *with interest from date.*

Credit to Drawer. *George W. Kissinger.*

Witness:

Due. *Herman J. Eppler.*"

The portions of the above note which are written are printed in italics. On the back of the note the following appears:

"George Kissinger's note. For 100 $\frac{00}{100}$. Due Nov. 19th, 1881."

The alleged account objected to, for the reason that it does not appear when, how, nor for what purpose it was made, nor that it is original evidence as to anything contained or not contained in it, and as entirely immaterial.]

Cross-Q. 70. The note of Mr. Kissinger, which you have produced, has the body of it filled up in your handwriting, has it not?

A. It has, sir.

Cross-Q. 71. The signatures of the maker and the witness are the signatures of Mr. Kissinger and Mr. Herman J. Eppler, are they not?

A. I think so, sir, from the signatures.

Cross-Q. 72. In the exhibit, "Draper-Kissinger account," one item is: "Paid Mrs. Stotter, 4.50." Will you produce the receipt for that?

A. I produce it.

[***Paper put in evidence, marked "Stotter Receipt," and is as follows:***

"Marysville, Sep. 24, 1877.
Rec Tin for Rep. house
from Mrs. E Stotter to the
amount $4.50."]

Cross-Q. 73. One of the items in that account is: "Borough Tax' $18." Will you please produce the receipt for that?

A. Yes, sir; here it is.

[***Witness produces paper, which is put in evidence, marked "Brabson Borough Tax Receipt," and is copied as follows:***

"Rec Marysville no 3, 1877, of Thomas Draper By the hands of George Kissinger Eighteen dollars in full for Borough tax for 1876.

L. W. Brabson, Collector."]

Cross-Q. 74. Do you remember the purpose for which you wrote that paper, "Exhibit Draper-Kissinger Account?"

A. I wrote it with the expectation of getting a settlement with Mr. Kissinger. When I showed him the account, he said that he had other

receipts to bring in that were not paid at the time I made this out; that is, down to here [indicating the figures to and including $145.82]. I think I made that out before I went up to Marysville. He brought other receipts in then, and this bill of work on the observatory and porch. I entered these lines here as he read them off to me [indicating the entries below the figures $145.82].

Cross-Q. 75. In the fourth set of Kissinger entries in "Exhibit Draper Diary," the last item is "Borough Tax 1877, $15.84." Will you please produce the receipt for that?

A. Yes, sir; here it is.

[*Witness produces paper, which is put in evidence, marked "Complainants' Exhibit Beabson Borough Tax Receipt for* 1877." *It is as follows:*

"Rcd. Marysville, Feb. 5, 1878, from Thomas Draper, By the hands of George Kissinger, fifteen dollars and eighty-four cents, in full for Borough tax for 1877.

L. W. Brabson, *Collector.*"

The receipt is in ink, and has written on its back in pencil the word "allowed."]

That isn't on this account, is it? No; that is one he found and brought in afterwards.

Cross-Q. 76. Among the papers which you have brought here this afternoon is a letter to you from Mr. Kissinger, dated May 23, 1879. Will you please produce it, and put it in evidence?

A. Yes, sir; here it is.

[*Letter put in evidence as "Complainants' Exhibit Kissinger-Draper Letter of May* 23, 1879," *and is as follows:*

"Marysvill, May 23, 1879.

Mr. Draper, Dear Sir i received your Letter on the 20 that you would like for me to come down i Dont se how i can now i have to much to Do here the Barn must Be fixt new wall in Before i can put my hay in i have prop it up and the fraim end must go in and the spring house is to put up so i think that will pay me and you about as well if it was in the fall i would like to spend a month with you and my hay and feed is all and i have to By were i can get it i have turned out to paster But it is short yet and the hay crop will be short we had no rain for 7 or 8 weeks till last week and wheat is short yet i have put out a fine lot of potatos and the bugs is plenty i have foun as hy as 4 and 5 on one stock we will get some peaches yet i thought that we woulden get eny and the apples wont be many and your colts is geting along fine the one is a little lame yet they are so Devlish that we cant harly do enything

with them we tame the one in June the Dresser will Be roun the phosphit is here most all on the corn Docter Traver store was robd last week of about 3 or 4 hundred Dollars worth of goods and last neight they were trying to get his horse neight before last stole a horse from Galt up the valley and some time ago harman eppley he was nock Down as he was locking his store i suppose they had intend to Rob him he said that he had one hundred and twenty-five Dollars at that time i think i have given you all the news at presend if you can put of some work till this fall i would like to come Down and Do it But this work must Be Don for i cant risk my stock this way for it is unsafe nothing more yours truly.

Geo. Kissinger.

We are all well at present rite soon you cant rite to much or to often."

[*Letter objected to as immaterial and irrelevant.*]

Recess until 7.15, P. M.

Cross-Q. 77. You were at Marysville one fall with Mrs. Draper, and at Marysville the next fall with your daughter, Miss Jennie Draper, were you not?

A. Yes, sir.

Cross-Q. 78. And you were not there between the visit you made with your wife and the visit you made with your daughter, were you?

A. To the best of my recollection, I was not.

Cross-Q. 79. You bought a horse from Mr. Kissinger a short time before he moved away, did you not?

A. Yes.

Cross-Q. 80. Did Mr. Swartz bring that horse down to Delaware with his own when he moved down; and if you have the bill of lading for those horses, will you please produce it? It was among the papers which you had here this afternoon.

[*Objected to as immaterial.*]

A. Mr. Swartz's son came down in company with me to Harrisburg. We then got the horses shipped to Philadelphia—I think, in his name. I know I got him a passage in the cab of the freight train, to attend to the horses. I took the passenger train to Philadelphia, and met him at the stock-yard depot. We brought the horses down the next day, or the day after, on the steamer John E. Taggart, to Smyrna, Delaware. He took his horse home, or started home, to Easton, Md., and I took mine to my own home in Kent county, Delaware. That was in the spring of 1880.

That, I think, is the bill of freight on the horses—I judge, from Harrisburg to Philadelphia.

[*Witness produces paper. The paper produced is a bill of lading for two horses, from Harrisburg to Philadelphia, dated March* 12, 1880. *The bill states that they are received from Thomas Draper, but is signed by W. H. Swartz as shipper.*]

Cross-Q. 81. Were you in Philadelphia when your wife and daughter testified, or had you come home before they testified?

A. I was not; I came home before they were called.

Cross-Q. 82. I call your attention to the Kissinger-Draper letter of May 30, 1875. You say that you showed that to Mr. Kissinger. Where did you show it to him?

A. I showed it to him at the brick hotel in Easton, with other letters of his—all that I had of his at that time. I think there were four or five of them.

Cross-Q. 83. Who asked you to go to Easton on that occasion?

A. Mr. Fenn and Mr. Church, I think.

Cross-Q. 84. Mr. Church is one of the lawyers for the defendants, is he not, and Mr. Fenn is employed by them?

A. They so represented it to me.

Cross-Q. 85. Did they go to Easton with you?

A. Yes, sir. They did not go from Dover with me. When I got on the cars at Clayton I found them on the cars. I met them there very unexpectedly.

Cross-Q. 86. Clayton is where the road to Easton branches off from the main road, is it not, and it is about twelve miles from Dover?

A. Yes, sir. I expected to have met one of them in Easton, but supposed they were going by the way of Baltimore. They had been at my house a day or two before, and had seen these letters. They asked me if I knew them to be Kissinger's letters. I told them that we had been searching up papers for the Bell Telephone Company, and had found the letters in different places, and that I believed them to be his letters; that I thought I knew his handwriting, and that I believed, too, that he would own them if he could see them. They then asked me if I wouldn't take them down and show them to Kissinger, and see what he would say. I told them I could do so, but would not unless they would pay my expenses to Easton and back. Mr. Church said he would willingly do that, and gave me a five-dollar bill to pay my fare

and expenses to Easton and back. I don't know as I should have consented to go at all, but I felt that some one might call on me to testify to those letters: and it was so long since I had received them, and they had been scattered about so, that I thought I could not conscientiously swear to them unless I got him to acknowledge them. When I showed them to him, he took up the long letter, I think, that was written in 1879, first, and read about half of it. He then stopped, and said he didn't believe he remembered that letter. He went on reading, and then said: "Yes, I do; that is my letter," and, turning over to his name, said: "That is my signature." He then took up the other letters and read them all, one by one, and said: "Yes, these are all my letters, and I particularly remember the one with reference to the piping and peach trees," and related the circumstance of our trimming the peach trees; I took a saw and trimmed a row, or a half row, of peach trees, and showed him how to do it, when I was up in the spring. Mr. Church then asked him—

[*Respondents' counsel object to all of the above answer after the first two words, "yes, sir," as not in any way responsive to the interrogatory, and object to the further continuation of statements not called for by the interrogatory, and which are merely consuming time, and which, further, not being responsive, are brought in in such a way as to prevent respondents' counsel from interposing such proper objections as he might do otherwise. And he asks the Examiner to instruct the witness to notice the questions that are put to him, and to confine his answers to the interrogatories.*]

if the pipe spoken of in that letter wasn't intended for the ram that he put in on Draper's farm in Pennsylvania.

[*Complainants call the attention of the Court to the precise point to which the foregoing objection was made. Complainants also object that the letter referred to and put in evidence by the respondents has not been properly proved.*]

Cross Q. 87. When you were just interrupted by respondents' counsel, you had begun to state a conversation between Mr. Church and Mr. Kissinger, and you had stated the question put by Mr. Church to Mr. Kissinger. Will you now state the reply which Mr. Kissinger made to it?

[*Objected to as not inquired of in the examination-in-chief, as calling for hearsay, and any statement that Mr. Kissinger may have made is objected to as hearsay and as incompetent.*]

A. He said, "Yes, I suppose it was." Then he smacked his hands, and said, "Blast that ram;" he wished it had been to the devil before he ever saw it. "Now, I suppose, you will want to get me away again, and I'll be blamed if I'll go, or ever say another word about it."

Cross-Q. 88. Didn't Mr. Kissinger say, while you were there, that the pipes spoken of in that letter were pipes which he spoke of putting in to run the water from a spring up on the hill-side, up to the house, without pumping?

[*Same objections.*]

A. No, sir; he said they were pipes spoken of when we first spoke of running the water from the spring to the ram, or to where they put in the ram. He said he had been bothered more over that old ram than all the rams in the county were worth, I believe; and he wouldn't be bothered any more.

Cross-Q. 89. When was this visit to Easton?

A. I don't remember the day now; it has not been more than a week, or such a matter.

Adjourned until June 11, 1884, at 10, A. M.

JUNE 11, 1884, 10, A. M.

Examination resumed.

Present, same counsel.

Cross-examination of Thomas Draper, by Mr. Storrow, continued:

Cross-Q. 89½. During that visit to Easton, a week or so ago, did you see anybody you had known before, besides Mr. Kissinger?

A. Oh, yes.

Cross-Q. 90. Whom?

A. I saw Mr. Swartz and his family.

Cross-Q. 91. Who went with you to see them?

A. Mr. Church and Mr. Fenn; we all rode out together.

Cross-Q. 92. Mr. Fenn came to Dover again on Thursday of last week, didn't he?

A. I don't remember to have seen Mr. Fenn since, till you all came. He might have been—I forget. I think Mr. Fenn was here afterwards, now, when I come to think of it.

Cross-Q. 93. When did you last see Mr. Kissinger before the visit to Easton, a week or so ago?

[*Objected to as new matter not in any way referred to in the examination-in-chief, and as immaterial and irrelevant.*]

A. I don't remember. The last time I saw him I saw him in Dover, but I don't remember when it was; I know it was since the different telephone companies have been coming here to interrogate me, but I don't remember the time. They brought him here, but I don't remember which one of them; or he came here with some of them.

Cross-Q. 94. Whom did he come here with?

[*Same objection.*]

A. I don't remember.

Cross-Q. 95. Whereabouts in Dover did you see him?

[*Same objection.*]

A. I saw him on the street and at my office.

Cross-Q. 96. Who was with him at your office?

[*Same objection.*]

A. I don't remember who was with him.

Cross-Q. 97. Wasn't it Mr. Jacobs and Mr. Daniel Drawbaugh?

[*Same objection.*]

A. I don't remember who came with him; I know he came, and came to my office. I know some of the conversation I had with him at the time, but I don't remember who came with him. I know Mr. Jacobs has been here once, and I know Mr. Drawbaugh has been here, but I don't remember whether they all came at one time or not.

Cross-Q. 98. Had not the same gentlemen who came to see you with Mr. Kissinger, then, been to see you a day or two before that?

[*Same objection.*]

A I don't remember that, either; I know Drawbaugh has never been here but once to see me.

Cross-Q. 99. Do you remember what season of the year it was that Mr. Kissinger was here?

[*Same objection.*]

A. I do not.

Cross-Q. 100. Do you remember whether Mr. Kissinger's visit was before, or after you testified at Philadelphia?

[*Same objection.*]

A. I do not.

Cross-Q. 101. Do you remember whether Mr. Kissinger stayed over night on that occasion?

[*Same objection.*]

A. I do not. I remember that I asked him to go and get a meal with me, but he declined—said that they were stopping at the hotel.

Cross-Q. 102. At the Capitol Hotel, next door to your office?

[*Same objection, and also objected to as calling for hearsay.*]

A. I don't remember where they stopped. I first saw him on the corner, I think, at the Capitol Hotel. I am inclined to think they did stop there, but I can't say positively.

Cross-Q. 103. You have mentioned the fact that the attorneys of the Overland Telephone Company have been to see you; when was that?

[*Objected to as immaterial and irrelevant.*]

A. I don't remember.

Cross-Q. 104. Was it not November or December of last year—1883?

[*Same objection.*]

A. I don't remember what month it was, or when it was exactly.

Cross-Q. 105. Do you remember whether it was last year or this year?

[*Same objection.*]

A. I couldn't tell that, either. I took no account of the time. I received a note from George Massey, one of our attorneys in Dover, that he would like to see me at his office that evening. I don't remember the hour. When I went up there I saw there Mr. Bradford, from Wilmington, and some other gentleman, whose name I don't remember.

Cross-Q. 106. And they were the attorneys of the Overland Company, as you understood?

[*Same objection.*]

A. They interrogated me on the subject, as to what I knew about having seen these instruments at Drawbaugh's shop.

Cross-Q. 107. These are the gentlemen whom you referred to on your direct examination as the attorneys of the Overland Company, are they not?

[*Same objection.*]

A. Yes, sir.

Cross-Q. 108. You gave them an order to the tenant of your farm to let them search for papers there, did you not?

[*Same objection.*]

A. I don't remember that, positively. It seems to me that I have a kind of an indistinct recollection that I did. I couldn't say positively that I did. I am pretty sure, if they asked me, I did. I have not kept anything back from either of the companies.

Cross-Q. 109. When Mr. Storrow first saw you this spring, you told him that the Overland people had been to your farm and searched for papers, and had told you that they found nothing about the ram, did you not?

[*Same objection.*]

A. I don't remember that; if I did, it was so; I know I have given several orders to search.

Cross-Q. 110. They were here before Mr. Storrow was, were they not?

[*Same objection.*]

A. I don't remember that, either; they have all been here so much that I can't carry the dates in my mind—either who was first, or who was last; I kept no record of any of their visits.

Cross-Q. 111. Mr. Storrow was here first in February of this year, was he not?

[*Objected to on the ground that the witness has already stated that he could not fix the dates, and complainants' counsel is now evidently endeavoring to testify, under guise of putting questions. And further objected to as immaterial and irrelevant.*]

A. I don't remember when he was here first.

Cross-Q. 112. Mr. Storrow's first visit was a month or more before Mr. Comfort's first visit, was it not?

[*Same objection.*]

A. I don't remember that, either; I am inclined to think Mr. Comfort came first.

Cross-Q. 113. Let me refresh your memory a little. Did you not tell Mr. Storrow, the first time he came here, that the Overland people

had been to see you, but that no one else had been to see you about the ram since Mr. Kissinger had been here?

[*Same objection.*]

A. I don't remember to have said that; I remember telling Mr. Storrow that the Overland Company, or people, or something, had been to see me, but I don't know whether it was at his first visit or other visits.

Cross-Q. 114. Who was the last tenant on your farm at Marysville before Mr. Kissinger moved there in April, 1874?

[*Objected to as new matter not referred to in the examination-in-chief; also objected to as immaterial and irrelevant.*]

A. I don't just remember that, either. There were two or three changes there, and I forget just who went in first. It was a fellow that went out West, I think, but I forget his name.

Cross-Q. 115. About how long before Mr. Kissinger moved on to that farm in 1874 were you up there to look at it?

[*Same objection.*]

A. I don't remember that, either. I went up frequently—generally once a year, I mean, or something like that.

Cross-Q. 116. Were you not up there about the time your last tenant moved away, or shortly before he moved away, in the spring of 1874?

[*Same objection.*]

A. I don't remember.

Cross-Q. 117. At what season of the year was it that you made your first visit to Marysville after Mr. Kissinger moved on to the farm in the spring of 1874?

A. I don't just remember that, either—the exact date.

Cross-Q. 118. Do you remember what season of the year it was?

A. It was some time, I think, either in the summer or fall. It was some time after Mr. Kissinger moved up. I know it was some time before I began to cut timber for the vessel.

Cross-Q. 119. Where did you stay at Marysville at that visit?

A. I think I stayed at Kissinger's. I generally stayed there. I have stopped several times at Schreiner's.

Cross-Q. 120. Have you any distinct recollection as to where you stopped at that first visit which you made after Mr. Kissinger moved there?

A. My recollection is that I stopped at Kissinger's. I know Mr. Kissinger and I went to Drawbaugh's in a spring-wagon on the first visit that I made there after Kissinger moved on to the farm.

Cross-Q. 121. Where else did you go during that visit?

[*Objected to as new matter not referred to in the examination-in-chief, and as to which the complainants make the witness their own if they proceed to examine him.*]

A. I don't remember that we went anywhere else. Kissinger might have run about the town a little, but I don't recollect that I went anywhere, only to Drawbaugh's shop. We walked over the farm, and up into the woods, but I don't remember that we rode off anywhere.

Cross-Q. 122. Do you remember anything that you did during that visit besides what you have stated in your last answer?

A. I do not.

Cross-Q. 123. Do you remember how long you staid there at that visit?

A. I do not; I am sure it was not many days; it might have been two or three.

Cross-Q. 124. What farm-work was going on on the farm at that time?

A. I don't remember that, either; I remember that I told him he ought to have trimmed and cultivated his peach trees in the spring when he first went there.

Cross-Q. 125. How long before Mr. Kissinger moved there, in 1874, had your stone house been built?

A. The stone house was built in 1867; Mr. Kissinger moved into it first; he was the first tenant who lived in the new house; he lived in the old house awhile, and then moved into the new one after I got it built.

Cross-Q. 126. Was it not Mr. Storrow, and not Mr. Comfort, to whom you gave an order on your tenant to allow search among your papers at your farm?

A. I am not positive about that; I think I gave an order to one of them, and, it may be, both; my impression is that they have both been there to search; I made no minute of these things, and there has been so much searching that I can't just remember to whom I gave written orders.

Cross-Q. 127. The papers at your farm near Magnolia were a lot of

old papers and letters of the time of the war and soon after, left on the floor in a closet there, were they not?

[*Objected to as assuming and stating alleged matters about said papers of which the papers themselves are the only competent evidence. Therefore, the question is incompetent, and calls for secondary evidence.*]

A. They were papers that the family at the time supposed would not be of much use to me at Dover; some of them might have been duplicate monthly and quarterly reports that I made out while I was in the army; I don't think I have ever looked over them since they were left there, but once; I went down there once, I think, and found the lease of Kissinger.

Cross-Q. 128. When Mr. Jacobs and Mr. Drawbaugh were here during the same year that you testified at Philadelphia, you showed them the diary which was produced yesterday, did you not?

A. I don't remember that I did.

Cross-Q. 129. When Mr. Storrow first came to see you, you told him that you had shown that diary to Mr. Jacobs or Mr. Drawbaugh, or both, did you not?

A. I don't remember that I did. I think it was after Mr. Jacobs and Mr. Drawbaugh were here that I began to look for the papers, if my memory serves me right. I know that I took the lease and the diary both to Philadelphia with me when I went up, when I was first called to testify.

Cross-Q. 130. When you testified before, for the defendants, at Philadelphia, in the spring of 1882, you testified that Mr. Drawbaugh and Mr. Jacobs had been to see you at Dover, which, of course, would have been before you testified. They came to see you again the same year, and after you had testified, did they not?

A. I don't remember.

Cross-Q. 131. You have spoken of Mr. Beadford of Wilmington, in your 105th answer; have you ever seen him since that occasion when he and you met in Mr. Massey's office?

A. Never, until last night, to have any correspondence with him—any talk with him. I met him on the pavement and shook hands with him last night.

Cross-Q. 132. Did you have any talk with him last night?

[***Objected to as entirely immaterial and irrelevant; and any talk with Mr. Bradford objected to as hearsay.***]

A. Yes.

Recess until 2, P. M.

Re-direct by Mr. Hill, de bene esse:

Q. Q. 133. In your 74th cross-question you were asked if you remembered the purpose for which you wrote that paper—"Exhibit Draper-Kissinger Account"—and you answered as follows: [Reading the 74th cross-answer to the witness]. Tell us anything else that you remember about that paper, or the making or use of it.

A. Well, I remember that when I went up he said he had other receipts, and he gave me these at the top here. We made no settlement at the time; and afterwards we looked over the account at the house, and entered these [indicating the part of the account below the figures "145.82"]—we entered these on the pass-book in their proper places and, I think, at the same time we entered the expenses of the ram. They were all entered just as Kissinger gave them to me—according to his bills and receipts—and when the settlement was made, it was made by the entries in the pass-book. The men were directed by those entries in making that settlement for us.

Q. Q. 134. Was that at the same visit when the three notes were made, or at some other visit?

A. I can't say positively; I am of the opinion, though, that they were entered in the fall of 1878.

[*Witness' opinion objected to.*]

Q. Q. 135. And is it your recollection and belief that the item, "Expenses of ram, 60.00," was entered in the pass-book in the fall of 1878 or at some other time?

A. I think it was entered in the fall of 1878. I am rather inclined to the opinion that the ram was finished some time after my visit to Marysville in 1877, though I know that it was begun before that.

Q. Q. 136. And when in the fall of 1878, as you think, you entered in the pass-book or diary the words, "Expenses of ram, $60.00," among the accounts and charges of the year 1876, why did you put them among the accounts of that year instead of among the accounts of some other year, if you remember?

A. I can't positively say, but my opinion is it was done according to Kissinger's direction. I can't positively remember, but some of his expenses might have been in that year. I suppose Kissinger had an ac-

count of it himself. He was to do it for $60; that was the first contract.

[*Witness' opinions, suggestions of possibilities, and suppositions objected to.*]

A. I know he told me Drawbaugh owed him enough to pay for the ram before we bargained for it at all.

Q. Q. 137. When the three notes were given you by Mr. Kissinger in the fall of 1878, did they include the "expenses of ram $60"?

A. I suppose they did. They made up their account by the entries in that pass-book just as they are to-day; that was all the account they had, and I told them at the time to do just what they thought was right; that I never expected to get the account, any way; neither did I—all of it.

Q. Q. 138. And when the account between you and Mr. Kissinger was settled in the fall of 1878 it was, at that time, considered right and proper that the "expenses of ram $60," should not be entered in the accounts of 1878, nor in the accounts of 1877, but in the accounts of 1876; is that the fact?

[*Objected to as leading and as immaterial.*]

A. I can't say positively that they took that into consideration. These entries in the book were made up at Mr. Kissinger's house; him and I were both present, and they were made satisfactory to us at the time. The only objection Mr. Kissinger made to the account was interest; he didn't think I ought to charge him interest.

Q. Q. 139. At that time it was considered, between you and Mr. Kissinger, proper and right to charge the "expenses of ram $60," not in the accounts of the year 1878, nor in the accounts of the year 1877, but in the accounts of the year 1876?

[*Objected to for the reasons stated above, and because it is not proper re-direct examination.*]

A. I think so, or we should not have so placed it. It has been a long time, and I don't remember any controversy over it.

[*Objected to by Mr. Storrow as mere inference.*]

Q. Q. 140. Please look at the letter which I now hand you, and state from whom it was received, and when you received it?

A. I received it by mail about the second or third of May in this year; I suppose from Mr. J. J. Storrow.

[*Letter offered in evidence, and marked "Exhibit Storrow Letter." The letter is as follows:*

Phil. May 2, 1884.

Thos. Draper, Esq.

Dear Sir—Miss Jennie misunderstood. The figures in the book are plainer than in the photograph. It is clear that they are perfectly honest and have never been changed since the time you and Mr. Kissinger settled in 1878. I have no doubt but that you first wrote the figures as they were and then, while settling, rubbed out the addition (which is still legible) and put the ram figures where they are, for some reason which was satisfactory to you and Mr. Kissinger & entirely proper. This is substantially what Mr. Kissinger told me long ago, & before I saw the book; it was apparent to me when you showed me the book, and it is what you have told me.

The other side have talked that you had an entry showing that the ram was put in and settled for in 1876. No one could believe that upon looking at the book and it is contrary to your own statements. That is what Mr. Comfort referred to and that is why the book would not be good evidence alone.

Yours truly,

J. J. Storrow."]

Q. Q. 141. You say that Mr. Kissinger objected to your charging interest; did you charge him interest on the balance of the rent account due at the end each year?

A. That is the way we added it up, and I charged interest on the unpaid balance of each year.

Q. Q. 142. Name all the persons who were present at the brick hotel at Easton a week or two ago when you exhibited to Mr. Kissinger the letter marked "Exhibit Kissinger-Draper Letter, May 30, 1875?"

A. Mr. Church, Mr. Fenn, Mr. Kissinger, and myself were the only persons in the room at the time.

Q. Q. 143. During that interview at Easton, did Mr. Kissinger, when he read the letter of May 30, 1875, which has been put in evidence here, state whether or not he remembered anything that was referred to in that letter?

[*Objected to as calling for hearsay.*]

A. He said he particularly remembered that letter that stated about the pipes and the trimming of the peach trees.

Q. Q. 144. In the 88th cross-interrogatory Mr. Storrow asked you as follows: "Didn't Mr. Kissinger say, while you were there, that the pipes spoken of in that letter were pipes which he spoke of putting in to run the water from the spring up on the hillside up to the house

without pumping? Is there a spring on that hillside higher up than the spring from which the ram was to receive its water?

A. There is one, but it is a very small spring, and only runs a part of the year—doesn't run in dry times.

Q. Q. 145. Did you ever contemplate laying pipes from that upper spring to any place? If so, to what place, and when?

A. We did. When I was building the new house we talked of trying to open up that spring farther up in the hill than where it came out at the time, and talked of laying a pipe from that to a trough in the barn-yard, on the same side of the hill, opposite the new house.

Q. Q. 146. Is that new house the stone house that was built in 1867?

A. Yes, sir.

Q. Q. 147. Why did you contemplate laying pipes from that spring to the barn-yard, when the large lower spring was so near to the barn?

A. Simply to save the waste of manure. When I went there the barn-yard was on the side of the hill, and I thought about half the manure was washed away, and I built a stone-wall to prevent that; and we thought if we put a trough in there, and ran the water into it, we could water the creatures in the pound, and save that waste of manure.

Q. Q. 148. When was that project abandoned?

A. I guess it was abandoned when I left the farm. I never thought about it afterwards—or when I left the State; I didn't live on the farm at all.

Q. Q. 149. When did you leave the State?

A. I think I left it just before Christmas; my family moved down just before Christmas, in 1867; I left myself a month or two before they did, but went back for them. I think that idea of turning the water into the water-trough was an idea of Mr. Kissinger's. I know we were up there one day with a spirit-level, trying to see whether we couldn't turn the water into that pound, and water the cattle without driving them out at all.

Q. Q. 150. Did you ever at any time contemplate or talk about running the water from the upper spring to the house?

A. I think not.

Q. 151. When you were at Easton, a week or two ago, did you mention to Mr. Kissinger the fact that during your visit to the farm in

April, 1875, you had seen the logs piled up by the barn, and had had the talk with him about their being too small for bored wooden pipes?

[*Objected to as assuming and leading.*]

A. I did; he said he didn't remember that particularly; and, I think, at the same time, he said he would be blamed, or be blasted, or something to that effect, if he ever would go anywhere or say anything more about those pipes.

A. I think Mr. Fenn said: "George, we don't want you to go anywhere. We only came down here to see if you would acknowledge those letters." He said he had already done that, and he would be blamed if they hadn't been talking about pipes ever since he first lived on that farm. Then, I think, Mr. Church wrote a little acknowledgment of the letters with a pencil on a piece of paper and showed it to Mr. Kissinger. He said he couldn't see it, and borrowed my glasses and read it. He then sat down and wrote his name on it, or wrote something. I didn't read it. I suppose it was his name. And, if I am not mistaken, that was the end of our interview with Mr. Kissinger. He left and went home.

[*Objected to as hearsay, and also as incompetent.*]

Q. Q. 152. If I understand you correctly in your cross-examination, Mr. Kissinger, during that interview in Easton, admitted or stated that the iron pipes which were mentioned in "Exhibit Kissinger-Draper Letter, May 30, 1875," were pipes for the ram. Is my understanding correct or not?

[*Objected to as leading and asking for hearsay.*]

A. I so understood him in his answer to a question asked him, I think, by Mr. Church.

Re-cross by Mr. Storrow, de bene esse:

[*The complainants, without waiving any objections, call for the production of the paper referred to in the witness'* 151*st answer.*

Respondents' counsel replies that said paper is not here present in the State of Delaware, nor has respondents' counsel, Mr. Hill, who is here conducting this examination, ever seen it, but he supposes it must be in the possession of Mr. Church at Harrisburg. The paper was not made the subject of any direct or re-direct questions, but was merely mentioned incidentally by the witness in answer to some other question. Respondents' counsel, therefore, is unable to produce it at this time, and he denies the right of complainants'

counsel to demand its production, although it is possible that he may see fit to produce it upon his return to Harrisburg, if he shall find it there.

Complainants say that respondents must take the consequences of refusing to produce it.]

Re-cross-Q. 153. With reference to the visit which Mr. Kissinger and some other gentlemen made to you after you testified at Philadelphia, I wish you would look at the book I now show you, which purports to be the register of the Capitol Hotel, at Dover, Delaware, upon which, under date of September 7, 1882, are the names of M. W. Jacobs, Harrisburg, Pa.; Daniel Drawbaugh, ditto; G. W. Kissinger, Easton, Md., and state whether this does not bring to your mind who it was who came with Mr. Drawbaugh, and when their visit was.

[*Objected to as immaterial and as not proper re-cross-examination.*]

A. That register shows that they must have all been here at the same time.

Re-cross-Q. 154. You have said that the account which you made up for Mr. Kissinger to settle by was larger than he thought it ought to be, and that some matter about it was left to Mr. Seidel and Mr. Eppler, and some of the amount thrown off; was the amount that was thrown off thrown off in consequence of what those two men advised, according to your recollection?

A. I think I stated that the accounts made up, as they stood on the book, were entirely satisfactory to Mr. Kissinger and myself, but that I claimed interest on the balance due for each year, and Mr. Kissinger thought I ought not to charge interest, and I told him we would leave it to men, and whatever they would say would be correct; but, if my memory serves me right, I told Mr. Seidel to make it just what they thought was right, for I never expected to get all of it, any way, or words to that effect; and I don't remember how much they did deduct off of the account.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 11th day of June, 1884.

FRED. M. OTT,
Examiner.

THOMAS DRAPER.

THOMAS B. DRAPER, *being produced, sworn, and examined, saith:*

Examined by Mr. Hill:

My age is twenty-five; I reside in Magnolia, Kent county, Delaware; I am manufacturing phosphate.

Q. 1. Are you a son of Thomas Draper, who has testified in this case?

A. Yes, sir.

Q. 2. George W. Kissinger, who was formerly a tenant on your father's farm at Marysville, Perry county, Penna., and who was examined as a witness in this case on behalf of complainants, testified, among other things, that he visited your father's family here in Delaware in the year 1876, during the Centennial Exposition at Philadelphia; were you at home at that time, and do you remember that visit of Mr. Kissinger or not?

A. Yes, sir.

Q. 3. While Mr. Kissinger was visiting your father's family at that time, did you or did you not hear any conversation between your father and Mr. Kissinger about a hydraulic ram for your father's farm at Marysville?

A. I did.

Q. 4. Do you remember the building of a schooner called the "Annie E. Draper" by your father and Mr. Bailey?

A. I do.

Q. 5. If you ever heard your father say anything about a visit to Mr. Drawbaugh's shop to order a ram, and about seeing a talking-machine there; will you please state, to the best of your recollection, when you first heard him speak of it?

[*Objected to as asking for mere guess-work; the witness should not testify upon the subject unless he has a positive recollection.*]

A. To the best of my recollection, it was before Kissinger was down in 1876.

Q. 6. What is your recollection as to whether it was before, or during, or after the building of the "Annie E. Draper?"

[*Same objection, and objected to as leading.*]

A. It was before Mr. Kissinger came down, and the "Annie E. Draper" was finished in 1875. I couldn't say how long before it was.

Q. 7. Have you ever seen Mr. Kissinger since that visit which he made to your father's home in 1876?

A. I have not.

Q. 8. Did you ever see Mr. Kissinger between the time when your father moved away from Marysville, in 1867, and the time when Mr. Kissinger made that visit to your father here in Delaware, in 1876?

A. If I did, I didn't know him.

Q. 9. Then, so far as you know, you have never seen Mr. Kissinger since the year 1867, except during that visit of his to your father's house in 1876; is that correct?

[*Objected to as leading.*]

A. Yes, sir.

Q. 10. Have you ever been on your father's farm at Marysville since you moved away from it in 1867?

A. I have not.

Cross-examined by Mr Storrow:

Cross-Q. 11. Do you remember where you were when you heard your father speak of having been at Drawbaugh's shop?

A. Yes, sir; I was at home, on a farm near Magnolia.

Cross-Q. 12. Who was present?

A. My mother, and brothers and sisters.

Cross-Q. 13. What part of the house was it in?

A. It was in the sitting-room, I think.

Examination taken, reduced to writing, and by the witness sworn and subscribed before me this 11th day of June, 1884.

FRED. M. OTT,
Examiner.

THOS. B. DRAPER.

Recess until 7.30, P. M.

7.30, P. M.

Mrs. ANNA E. DRAPER, *being produced, sworn, and examined, saith:*

Examined by Mr. Hill:

I am the same Mrs. Anna E. Draper who was examined as a witness for complainants in this case at Philadelphia, in April, 1884. [Complainants' printed rejoinder record, page 1880.]

Q. 1. I want you to tell us what you remember about your first

hearing your husband, Mr. Thomas Draper, speak of Mr. Drawbaugh's talking-machine.

A. I don't remember just what he said about it.

Q. 2. Do you remember what you said to him about it at the time?

A. Do you mean what I said before—that I advised him not to go into it—do you mean I shall tell that?

Q. 3. Just tell what you said to him.

A. Well, I said if I were in his place I wouldn't go into it. I thought he had business enough without that.

Q. 4. Where was that conversation between you and him about the talking-machine?

A. It was at our home on the farm near Magnolia.

Q. 5. Was Mr. Draper at Marysville a short time before that conversation?

A. I suppose he was.

[*Witness' suppositions objected to by Mr. Storrow as not evidence; only her positive knowledge being evidence.*]

Q. 6. Is it your recollection and belief that he was at Marysville not long before that conversation?

[*Objected to as asking for mere guess-work and inference, nothing but the positive recollection of the witness being competent evidence for the Court to rest upon.*]

A. Well, I must answer the same, for I can't say how long it was before that.

Q. 7. When he spoke to you at that time about Mr. Drawbaugh's talking-machine, do you remember whether he spoke about it as something he had learned about while on a visit to Marysville?

[*Objected to as leading.*]

A. I think he had learned of it in that way. I suppose he had.

[*Answer objected to as not evidence.*]

Q. 8. When he spoke to you about it at that time, at your home near Magnolia, was it a new thing to you, or had you ever heard of it before?

A. I don't remember to have heard of it before.

Q. 9. When you and your husband were on a visit to Marysville together, in the fall of 1877, did you hear anything said there about a talking-machine, or about Mr. Drawbaugh?

A. I don't remember, just now, to have heard anything about it at that time.

Q. 10. Do you remember hearing anything said at that time about your husband's going to Milltown to see Mr. Drawbaugh?

A. I do not.

Q. 11. You have referred to the fact of talking with your husband at your home near Magnolia about the talking-machine, and advising your husband not to go into it. Are you able to say whether that conversation took place in 1874, or 1875, or 1876, or 1877?

A. I cannot positively say what time it was.

Q. 12. You cannot positively say that it was not in 1874, then, if I understand you?

[*Objected to as leading, and because the witness' memory has been exhausted and does not suffice any further.*]

A. I have already told you that I do not know when the conversation was.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 11th day of June, 1884.

FRED. M. OTT,
Examiner.

ANNA E. DRAPER.

[*Complainants put in evidence the following:*

Register of the "Hotel Richardson," of Dover, Delaware, produced, and shows the following entries:

Monday, Nov. 19, 1883.

E. S. Bradford, Jr.,	Wilmington.
S. S. Hollingsworth,	Phila.

Thursday, Dec. 13, 1883.

M. W. Jacobs,	Harrisburg, Pa.
W. K. Fenn,	"

Friday, Dec. 14, 1883.

M. W. Jacobs,	Harrisburg, Pa.
W. K. Fenn,	"

Wednesday, Feby. 13, 1884.

J. J. Storrow,	Boston.

Wednesday, Feby. 20, 1884.

J. J. Storrow,	Boston.

Monday, March 17, 1884.
J. C. Comfort, Pa.
Tuesday, March 18, 1884.
J. C. Comfort, Pa.
Wednesday, April 2, 1884.
J. J. Storrow, Boston.
J. C. Comfort, Pa.
Tuesday, April 15, 1884.
J. C. Comfort, Pa.
Monday, April 21, 1884.
J. J. Storrow, Boston.
Saturday, Mch. 22, 1884.
W. K. Fenn, Harrisburg, Pa.

Respondents' counsel admits the fact to be that on November 19, 1883, *S. S. Hollingsworth was of counsel for the "Overland Telephone Company," but objects to the above entries of the hotel registers as immaterial, and as utterly incompetent to prove that the gentlemen named therein were not in Dover, Delaware, at many other times during the period included between the first and last date of said registers, and both before and after said period.*]

Adjourned to meet at Harrisburg on June 12, 1884, at 3, P. M.

HARRISBURG, PENNA., JUNE 12, 1884, 3, P. M.

Examination resumed.

Present, same counsel.

Dr. ANDREW J. TRAVER, *being produced, affirmed, and examined, saith:*

Examined by Mr. Hill:

I am the same Andrew J. Traver who testified heretofore in this case in behalf of respondents. (See respondents' printed sur-rebuttal record, page 542.)

Q. 1. Since you gave your testimony in this case in December last, has any person, or have any persons, in the interest of the Bell Telephone Company, visited you and labored to get you to change your testimony? If so, state who they were, and, as nearly as you can, when it was, how long the interview or interviews lasted, and, as near as you can remember, what they said to you.

A. Mr. Brooks—the gentleman here—and ex-Sheriff Beers visited me some time during the month of May last—on or about the nine-

teenth or twentieth of the month, as near as I can tell—about two o'clock in the afternoon, and remained one hour or more at my office in the borough of Marysville. Ex-Sheriff Beers introduced to me Mr. Brooks, stating that he was a representative of the Bell Telephone Company. Mr. Brooks, after making some casual remarks, stated that his business was to see me in regard to my testimony given on behalf of the People's Telephone Company, or words to that effect. I will now give you the substance of the conversation, to the best of my recollection: Mr. Brooks stated to me that prior to the evidence given by the Drawbaugh party they had, or he thought they had, established the fact that the ram on the Draper farm was not put in until the year 1878; and when the Drawbaugh party brought forward evidence to show that it was put in in 1876, he was somewhat surprised, and knew that there must be some mistake somewhere; that he went to work to investigate the matter, and discovered where Mr. Cowan had made a mistake in regard to the time he visited Mr. Kissinger, referred to in his first evidence; that after Mr. Cowan had laid his pipes, a year or more subsequently, he had to take them up on account of the roots of the trees, and so forth, getting into them and choking them; and that it was at this subsequent visit that he saw Mr. Kissinger working at his pipes; that he had visited Mr. Cowan, and after conversing with him upon the subject, Mr. Cowen admitted that he had made an error in his testimony; that Mr. Cowen had so expressed himself or admitted the error in his testimony at Philadelphia; that Mr. Cowen had also visited his former neighbor, Mr. Swartz, at his home in Maryland; that Mr. Swartz had also, upon hearing Mr. Cowen's explanation, or words to that effect—admitted or testified—I won't say which—one of the two—I think, though, admitted—I won't be positive about that—that he was in error. Mr. Brooks also named the Heisley boys as having admitted that they had erred in their testimony, or were mistaken in their testimony—one or the other. He also called my attention to the fact that Mr. Jesse Wagner had given positive evidence as to the putting in or walling in of the ram in November, 1878. Mr. Brooks remarked that those parties, being good and honorable citizens, or words to that effect, with others, having been mistaken in their evidence—that the principal witnesses, or words to that effect, of the Drawbaugh party, with the exception of Mr. Champion and his wife and Mr. Fesler, of whom they did not take very much account, or words to that effect, had admitted their mistake—might I not also be mistaken as to the time the conversation

referred to in my former evidence, that took place on the Kissinger farm, in regard to that ram, between Mr. Kissinger, Mr. Dissinger, Mr. Morley, and myself, when we took the assessment of 1876, as referred to in my testimony?

Q. 2. Did Mr. Brooks continue to talk over the matter during the entire time that he was at your place?

A. The conversation was principally upon that subject. There were a few jokes gotten off on the part of Mr. Brooks. There might have been some other matters conversed about, but not to any extent.

Q. 3. What did you tell Mr. Brooks in reply to his suggestions and arguments?

A. I replied by saying that I could not think of any other time or occasion when such conversation could have taken place, as we never met again under similar circumstances.

Q. 4. After you had so informed Mr. Brooks, did he continue to argue the question?

[*Objected to because it appears distinctly from witness' previous answer that Mr. Brooks did not argue or attempt to argue any question.*

Respondents' counsel replies that the Court can judge of that for itself.]

A. He continued to talk over the various points in the case, but as to the language made use of I do not pretend to be able to repeat. The conversation related principally to the matter of errors made by the witnesses of the Drawbaugh party, and of the evidence given at Philadelphia by the Bell party. Mr. Brooks said that he did not wish to persuade me or influence me against my own judgment or recollection; that I should think over the matter and give it my attention, and see whether I could not think of some other time when this conversation might have taken place, or words to that effect. I said that I would do so, as there certainly was a mystery connected with the case, or a link loose somewhere; but, as to my own recollection in the case, I could not for the life of me see where I could have been in error.

Q. 5. Inasmuch as Mr. Brooks asked you to think over the matter, but did not afterwards put you on the witness-stand to testify as to the effect that his talk had upon you, I will now ask you whether your subsequent reflection has confirmed you in the matter formerly testified to by you, or not.

[*Preamble of the question objected to because it does not appear that Mr. Brooks ever saw the witness again, or had an opportunity to see him*

again, or that the complainants had an opportunity to call him again before they were compelled to close their testimony in Philadelphia.

A. I am of the same opinion now that I was when I testified before. I might add to that that Mr. Brooks' conversation did not have any effect upon me as to the correctness of my first testimony, as I had given my first testimony from my own recollection and dates of documents, without being influenced by any party whatever.

Q. 6. As Mr. Brooks is here present, I will not ask you whether he is a very handsome man, but I will ask you whether he is not an exceedingly agreeable, persuasive, and insinuating man.

A. I would say that he is a very pleasant gentleman and a good conversationalist; as to the term "insinuating" I prefer not to make a statement or express myself.

Q. 7. Did Mr. Beers afterwards speak to you about going anywhere with him?

A. I have no recollection of Mr. Beers' asking me to go anywhere with him. About one week subsequent to the time of their visit at my office, I met Mr. Beers on the street, and he asked me if I had thought over the matter, and whether I was still of the same mind. I said that I was. That's about all the conversation that I have had with Mr. Beers on that subject since their visit to my house.

Q. 8. Do you know whether there was or was not formerly on the Draper farm, and at the spring near the barn—I mean the spring from which the ram received its water—a house that was sometimes occupied as a dwelling-house?

[*Objected to as leading and as not competent at this stage of the case.*]

A. Yes, sir; about the year 1871 or 1872—I am now testifying from memory, not having consulted my books—I visited a family professionally who were living in the spring-house.

Q. 9. Will you give us a description of that spring house, in order that we may get some idea how it looked from outside?

[*Objected to as incompetent at this stage of the case.*]

A. According to the best of my recollection, it was a log structure with, perhaps, a stone basement, the family residing on what might be called the second story. It looked to me as though the lower portion was used as a spring-house. I recollect of having to go up a pair of steps to get in to where the family lived.

Q. 10. Was its appearance such that a stranger, carelessly looking at it, might mistake it for an old-fashioned school-house?

[*Objected to as asking for the merest guess-work.*]

A. Such might have been the case.

Cross-examined by Mr. Storrow:

Cross-Q. 11. That building was torn down in 1875, was it not?

A. I cannot say when it was torn down, as I was not there again between that time and the time of taking the assessment of 1876.

Cross-Q. 12. It was not standing at the time you took the assessment of 1876, was it?

A. I cannot say positively. There was a structure of some kind there, but it appears to run in my mind that the old house was partly fallen down or torn down, but my recollection about the matter is so indistinct that I cannot say anything positive. There were a couple of old buildings, such as hog-pens, or other out-buildings, that may have gotten mixed up, in my mind, with that of the spring-house. Things were pretty badly dilapidated about the out-buildings, whatever they were.

Cross-Q. 13. Do you think that a man would have mistaken one of those dilapidated out-buildings, as they were when you made the assessment, for the village school-house? or do you think a man would have thought that the edge of a barn-yard, several hundred yards away from the road, would be selected by the authorities of Marysville for the site of a village school-house?

A. I hardly think that we have had a board of school-directors in the borough of Marysville, at any time, who would have been guilty of such a mistake.

[*Deposition of the witness suspended until June* 13, 1884, *at* 2, P. M., *on account of his having to attend to professional business at Marysville.*]

JUNE 13, 1884, 2, P. M.

Dr. A. J. TRAVER, *being present, his cross-examination was resumed by Mr. Storrow:*

Cross-Q. 14. Has anybody except Mr. Brooks ever talked with you about the ram, or have you ever heard anybody except Mr. Brooks talk about the ram?

A. Yes, sir; I have heard various persons talk about it.

Cross-Q. 15. It has been a pretty continual subject of talk at Marysville during the winter, hasn't it?

A. I cannot say so so far as my knowledge extends; that is, as to myself engaging in such conversation.

Cross-Q. 16. Mr. E. W. Wise testified in February last (defendants' sur-rebuttal record, p. 944) that he had heard conversations going on almost every evening in his store about it. "It has been talked of a great deal around there." It was talked of a great deal around Marysville last winter, was it not?

A. I presume it was, but I have not been in the habit of spending my evenings about the stores, hotels, and other places of public gathering. My evenings are devoted to my professional duties in my office, unless otherwise called for.

Cross-Q. 17. Who first spoke to you about the ram?

A. T. W. Morley.

Cross-Q. 18. When was that?

A. About one year ago, as near as I can recollect.

Cross-Q. 19. When did Mr. Fenn first speak to you about the ram?

A. It was some considerable time after Mr. Morley had spoken to me.

Cross Q. 20. When did you first see Mr. Hill, defendants' counsel?

A. Some time during last summer, at Strasbach's Hotel, in Marysville.

Cross-Q. 21. Who was with him?

A. Mr. Drawbaugh and another gentleman I am not able to name now.

Examination taken, reduced to writing, and by the witness affirmed and subscribed to before me, this 13th day of June, 1884.

FRED. M. OTT,
Examiner.

A. J. TRAVER.

WILLIAM K. FENN, *being produced, sworn, and examined, saith:*

Examined by Mr. Hill:

My age is twenty-four; residence, Marysville, Perry county, Penna.; occupation, justice of the peace.

Q. 1. Have you been employed for some time past in assisting the

attorneys of the People s Telephone Company in looking up their evidence in this case?

A. I have.

Q. 2. Do you know Mr. George W. Kissinger, who formerly occupied the Thomas Draper farm, near Marysville, and who now lives in Maryland? and if so, how long have you known him?

A. I know him; I have been personally acquainted with him since about August, 1874.

Q. 3. Are you familiar with his handwriting and his signature, or not?

A. I am acquainted both with his signature and his handwriting.

Q. 4. State how you acquired your familiarity with his signature and his handwriting.

A. I have seen a large number of papers which were signed by Mr. George W. Kissinger, and the signatures to the papers I never knew to be questioned as to their genuineness; Mr. Kissinger has written in my presence both receipts and various other memoranda, by which I am familiar with his handwriting; he has signed his name in my presence to which I have several times signed as a witness; he has inscribed his signature to official papers in the office of my father, the late Theo Fenn, J. P., deceased, formerly of Marysville, Perry county, some of which I yet have in my possession, as successor in office of my father, and some of which papers I was personally present and saw him sign; I have examined two of Mr. Kissinger's memorandum-books, containing accounts many of the items of which he himself told me were written by himself, and which he has pointed out to me.

Q. 5. Will you examine the letter which has been put in evidence in the deposition of Thomas Draper, answer , page , of respondents' printed sur-rejoinder record, marked "Exhibit Kissinger-Draper Letter, May 30, 1875," and which is signed "George Kissinger," and state whether you do or do not recognize the handwriting of the body of the letter and signature; and if you do recognize it, please state in whose handwriting they are.

A. I have examined it; the body of the letter is in the handwriting of Mr. George Kissinger, and the signature is his.

Q. 6. I believe Mr. Kissinger's full name is George W. Kissinger, while the signature to this letter omits the "W;" as you are familiar with his signature, will you please tell us how he is accustomed to sign?

A. He has signed his name in full, "George W. Kissinger," and I think I have seen him sign it "G. W. Kissinger;" I also think I have seen him sign it "George Kissinger," but he ordinarily signs it "Geo. Kissinger."

Q. 7. It is in evidence that you were present at a recent interview between Mr. Thomas Draper, Mr. Kissinger, and M. Church, Esq., one of the counsel for respondents in this case, at the brick hotel, in Easton, Md., at which interview this letter, "Exhibit Kissinger-Draper Letter, May 30, 1875," was shown to Mr. Kissinger, or put into his hands; do you remember the circumstance?

A. I do.

Q. 8. Did Mr. Kissinger at any time make any statement as to the authorship of the letter, or handwriting, or not?

A. He did; he read the letter carefully, and then said to Mr. Draper —I think in these words—"Yes, that is my letter; I recollect it now." I think he did, too, say, in answer to a question asked him by Mr. Church, that he wrote that letter, and that was his signature. He said he would acknowledge the letter any time, because he recollected about the things which were spoken of in it.

Q. 9. What things spoken of in it did he say he recollected?

A. He said he remembered about the iron pipes spoken of, and particularly about the trimming of the peach trees.

Q. 10. Did he, during that interview, say what those pipes were for which were mentioned in that letter, or not?

A. Yes; he said the old iron pipe was some that he expected to get for the ram; Mr. Church asked him the question as to whether the iron pipe referred to was intended for the ram or not, or for anything else; and Mr. Kissinger replied: "They were for the ram."

Cross-examined by Mr. Storrow:

Cross-Q. 11. You were present while Mr. Thomas Draper was giving his deposition at Dover, Del., this week, were you not?

A. I was; during portions of the time.

[*Mr. Church being now present, complainants' counsel now call on defendants' counsel to produce the paper referred to in Mr. Draper's deposition, answer* 151, *page* 203, *of defendants' printed sur-rejoinder record, and asked for therein.*

Mr. Hill replies that immediately upon his arrival in Harrisburg this afternoon he spoke to Mr. Church about the paper, with the intention of

examining it himself to see what it contained, as he had not yet seen it; but was informed by Mr. Church that it was in Washington, D. C. And Mr. Hill further says that as the paper has not been offered in evidence by respondents, nor has any attempt been made to prove its contents, or any portion of them; nor was Mr. Draper, in his examination, asked any question about it by respondents' counsel; Mr. Hill does not admit the right of complainants' counsel to the production of the paper, and, for the present, declines to take any steps towards its production, it being a mere private paper, the property of respondents' counsel, and which it was not sought to make any use of in the examination of Mr. Draper, nor in the examination of this witness, Mr. Fenn.

Complainants' counsel calls the attention of the Court to the fact that the paper was referred to, and what purported to be a statement of its contents was made by defendants' witness, Thomas Draper, in re-direct examination, and without objection from defendants' counsel, who was interrogating him; and gives notice that he shall ask the Court to disregard and disbelieve every statement made by any of the defendants' witnesses with regard to the interview with Mr. Kissinger at the brick hotel at Easton, unless that paper be produced and put in evidence by the defendants, so that such witnesses, and each of them, can be cross-examined thereon.]

Cross-Q. 12. In your fourth answer, you referred to papers which you said had been written by Mr. Kissinger; he moved away from Marysville more than four years ago, and you are now undertaking to identify his handwriting on a paper which, so far as appears, you have only seen within a few days; have you, since he moved away from Marysville, examined any of the writings which you named in that answer as standards; and if so, which of them, and how lately have you seen them?

A. In my fourth answer, I referred to papers which Mr. Kissinger had written while he lived in Marysville, if my fourth answer is correctly quoted in the question; I have examined papers which, I have no doubt, were written by Mr. Kissinger, as some of them have been put in evidence in this case since I examined them, upon the same day and at the same time that I first saw the Kissinger-Draper letter dated May 30, 1875.

Cross-Q. 13. What papers do you refer to as papers put in evidence in this case in your last answer?

A. They were papers which were among Mr. Draper's batch of Kissinger papers, or papers referring to Mr. Kissinger's farm matters, which Mr. Draper had there at his home in Dover, Delaware, when he first showed me the letter of May 30, 1875; and I think I could pick out at least one of the papers on the record of Mr. Draper's evidence, if I should see it.

[*Answer objected to as not responsive, and question repeated.*]

I think the question is sufficiently answered unless the papers put in evidence are produced on my examination.

[*At request of respondents' counsel, the Examiner notes that during the putting of the last three questions and the giving of the answers, the papers put in evidence in the deposition of Mr. Draper, have not been present in the room where this examination is going on; and at this point respondents' counsel requests the Examiner to produce them, in order that the witness may examine them and state which one or ones he means, if complainants' counsel shall press the matter any further.*]

Cross-Q. 14. Can you not state, from memory, what the papers are which you refer to in your 12th answer as put in evidence in this case?

A. There were some papers, written by Mr. Kissinger, or signed by Mr. Kissinger, which I know were produced in evidence during Captain Draper's last examination, which I know I saw and examined at Captain Draper's house when he first showed me the letter dated May 30, 1875.

Cross-Q. 15. Is the letter of May 30, 1875, referred to in your 5th question and answer, one of those referred to in your 12th answer as put in evidence in this case?

A. No; I referred to other papers.

Cross-Q. 16. Do you remember what other papers you referred to in your 12th answer as papers which you had no doubt were written by Mr. Kissinger, and which had been put in evidence in this case?

[*Respondents' counsel again demands the production of the papers here, in order that the witness may refer to them, and calls upon the Examiner to produce them now.*

Examiner declines to produce the papers for the inspection of the witness unless by consent of the cross-examining counsel, as he does not wish to interfere with the testing of the recollection of the witness; but he is willing to allow counsel for respondents to have access to the papers.

Complainants' counsel objects to the witness examining any papers at

examining it himself to see what it contained, as he had not yet seen it; but was informed by Mr. Church that it was in Washington, D. C. And Mr. Hill further says that as the paper has not been offered in evidence by respondents, nor has any attempt been made to prove its contents, or any portion of them; nor was Mr. Draper, in his examination, asked any question about it by respondents' counsel; Mr. Hill does not admit the right of complainants' counsel to the production of the paper, and, for the present, declines to take any steps towards its production, it being a mere private paper, the property of respondents' counsel, and which it was not sought to make any use of in the examination of Mr. Draper, nor in the examination of this witness, Mr. Fenn.

Complainants' counsel calls the attention of the Court to the fact that the paper was referred to, and what purported to be a statement of its contents was made by defendants' witness, Thomas Draper, in re-direct examination, and without objection from defendants' counsel, who was interrogating him; and gives notice that he shall ask the Court to disregard and disbelieve every statement made by any of the defendants' witnesses with regard to the interview with Mr. Kissinger at the brick hotel at Easton, unless that paper be produced and put in evidence by the defendants, so that such witnesses, and each of them, can be cross-examined thereon.]

Cross-Q. 12. In your fourth answer, you referred to papers which you said had been written by Mr. Kissinger; he moved away from Marysville more than four years ago, and you are now undertaking to identify his handwriting on a paper which, so far as appears, you have only seen within a few days; have you, since he moved away from Marysville, examined any of the writings which you named in that answer as standards; and if so, which of them, and how lately have you seen them?

A. In my fourth answer, I referred to papers which Mr. Kissinger had written while he lived in Marysville, if my fourth answer is correctly quoted in the question; I have examined papers which, I have no doubt, were written by Mr. Kissinger, as some of them have been put in evidence in this case since I examined them, upon the same day and at the same time that I first saw the Kissinger-Draper letter dated May 30, 1875.

Cross-Q. 13. What papers do you refer to as papers put in evidence in this case in your last answer?

A. They were papers which were among Mr. Draper's batch of Kissinger papers, or papers referring to Mr. Kissinger's farm matters, which Mr. Draper had there at his home in Dover, Delaware, when he first showed me the letter of May 30, 1875; and I think I could pick out at least one of the papers on the record of Mr. Draper's evidence, if I should see it.

[*Answer objected to as not responsive, and question repeated.*]

I think the question is sufficiently answered unless the papers put in evidence are produced on my examination.

[*At request of respondents' counsel, the Examiner notes that during the putti-g of the last three questions and the giving of the answers, the papers put in evidence in the deposition of Mr. Draper, have not been present in the room where this examination is going on; and at this point respondents' counsel requests the Examiner to produce them, in order that the witness may examine them and state which one or ones he means, if complainants' counsel shall press the matter any further.*]

Cross-Q. 14. Can you not state, from memory, what the papers are which you refer to in your 12th answer as put in evidence in this case?

A. There were some papers, written by Mr. Kissinger, or signed by Mr. Kissinger, which I know were produced in evidence during Captain Draper's last examination, which I know I saw and examined at Captain Draper's house when he first showed me the letter dated May 30, 1875.

Cross-Q. 15. Is the letter of May 30, 1875, referred to in your 5th question and answer, one of those referred to in your 12th answer as put in evidence in this case?

A. No; I referred to other papers.

Cross-Q. 16. Do you remember what other papers you referred to in your 12th answer as papers which you had no doubt were written by Mr. Kissinger, and which had been put in evidence in this case?

[*Respondents' counsel again demands the production of the papers here, in order that the witness may refer to them, and calls upon the Examiner to produce them now.*

Examiner declines to produce the papers for the inspection of the witness unless by consent of the cross-examining counsel, as he does not wish to interfere with the testing of the recollection of the witness; but he is willing to allow counsel for respondents to have access to the papers.

Complainants' counsel objects to the witness examining any papers at

present, except the one which was before him upon his direct examination.

Counsel for respondents protests against the whole proceeding as irregular and improper, and states that he does not wish to examine the papers, but that the witness has a right to examine them in answering the question.]

A. I don't care about seeing or examining the papers, as far as concerns my knowledge of Kissinger's handwriting and signature, but only requested their production in order to point out the particular paper or papers written or signed by Mr. Kissinger, which were put in evidence during Captain Draper's last deposition, and which I saw and read previously at Captain Draper's house, and which the question clearly indicated my pointing out, or specifying which of them it was.

Cross-Q. 17. Can you, or can you not, specify what the papers were which you believed to be in Mr. Kissinger's handwriting, and which you say were put in evidence in Mr. Draper's deposition?

[*Objected to as immaterial, it being of no consequence whether this witness can specify such papers from memory or not, so long as he is able to specify them if the papers put in evidence in Draper's deposition are produced and shown to him; the only material matter being the witness' ability to identify Mr. Kissinger's handwriting or signature, and not his ability, from mere recollection, to describe particular papers.*]

A. I think there was one letter—a long letter—from Mr. Kissinger to Captain Draper, containing some statements of account, put in evidence during Captain Draper's examination, but I am not altogether positive that it was put in evidence. That letter Mr. Kissinger read over in my presence, at the brick hotel in Easton, and said it was his letter and genuine. I think there was a letter put in evidence, dated some time in 1879, in which Mr. Kissinger mentioned that Mr. Galt's horse was stolen last night, or a few nights before. That letter I remember reading at Captain Draper's house when I first saw the letter dated May 30, 1875.

Cross-Q. 18. Was the letter, which you say in your last answer Mr. Kissinger read at Easton, so read by him at the same time as the letter of May 30, 1875, as stated in your eighth answer?

A. No, sir; that—the long letter referred to—was the first letter read by Mr. Kissinger at that time.

Cross-Q. 19. Were they all read by him at that same visit, the one after the other?

A. There were three or four read by Mr. Kissinger at that time; I don't know what "all" refers to in the question.

Cross-Q. 20. Was the long letter, which you say in your seventeenth answer Mr. Kissinger read in your presence, read by him on the same occasion when he read the letter of May 30, 1875, as stated in your eighth answer?

A. Yes, sir; but the question was answered just the same before.

Cross-Q. 21. In your twelfth answer you referred, as a standard of comparison, to papers which you said you had no doubt were written by Mr. Kissinger, and which you afterwards, in your thirteenth answer, referred to as papers which Mr. Draper showed you at Dover. Did you see Mr. Kissinger write those; and if not, what makes you feel sure they were written by Mr. Kissinger?

[*Objected to as improperly and incorrectly stating the testimony.*]

A. I don't think I referred to the papers as a standard of comparison with Mr. Kissinger's letter to Captain Draper, dated May 30, 1875, but referred to those papers as one of the opportunities I had of seeing and examining Mr. Kissinger's handwriting and signatures. I did not see him write them, but I believe them to be Kissinger's partly from the fact that Captain Draper, in whose possession the papers were when I saw them, told me that he had had the papers along with him to Philadelphia, when he went there by request of the Bell Company, when the Bell Company were taking their rejoinder testimony at Philadelphia, and showed them to Mr. Storrow; Mr. Storrow stated that there was nothing in them from Mr. Kissinger referring to the ram sufficiently to be of any use to them.

[***The latter part of the answer objected to by Mr. Storrow as hearsay, as not responsive, and as purposely volunteered by the defendants' agent, the witness now on the stand.***]

Cross-Q. 22. What else, if anything, led you to believe that the papers referred to were written by Mr. Kissinger?

A. If you refer to the whole batch of Kissinger's papers, which I saw at Captain Draper's house at the time I referred to, when I first saw the letter dated May 30, 1875, I would say that another thing which leads me to believe they were written by Mr. Kissinger, and at the time at which they were severally dated, is the fact that in them Mr. Kissinger referred to incidents that transpired at and about Marysville, which I know to have occurred as he in the letter stated them, and which no one

but Mr. Kissinger or some one living in the neighborhood could have had any knowledge of.

Cross-Q. 23. Will you now read your 4th answer, and tell me when and where you last saw each of the papers there referred to?

[*Objected to as manifestly unreasonable and absurd and simply wasting time.*]

A. Do you mean every paper or other memoranda mentioned in the whole of answer 4?

Cross-Q. 24. I do.

[*Objection repeated.*]

A. It is simply an impossibility for me to state when and where I last saw each particular paper or memoranda mentioned in my answer to question 4, and I should not pretend, under any circumstances, to attempt to do it. But I can state when and where last I saw some of them. The large number of papers referred to in answer 4, which I there stated I never knew to be questioned as to their genuineness, I last saw at Dover, Delaware, yesterday, in the possession of Captain Draper and Examiner Ott. These papers do not constitute all of the large number of papers, which I never knew to be questioned as to their genuineness. I have seen other papers, the times and places of which I do not now recollect distinctly. The papers referred to, which I have witnessed his signature upon, were sometimes papers signed as receipts and notes, and, I think, some pension papers, upon which I was also a witness as well as he, and of which I cannot give the times and places distinctly. I have examined recently Mr. Kissinger's signature in books and papers in my office, which I know to be genuine, some of which I saw this very day. I examined two memorandum or account-books of Mr. Kissinger's very thoroughly within the past year. I had them in the presence of Mr. Kissinger, I think, either in December last or in January last, and Mr. Kissinger then pointed out to me various items entered by himself in the books. This was at Mr. Kissinger's home near Easton, Maryland.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 12th day of June, 1884.

WM. K. FENN.

FRED. M. OTT,
Examiner.

Adjourned until June 13, 1884, at 10, A. M.

JUNE 13, 1884, 10.15, A. M.

Examination resumed pursuant to adjournment.

Present, Mr. Howson for complainants, and Mr. Church for respondents.

HERMAN LONG, *being produced and affirmed, upon examination, saith:*

I live at New Market, York county; am about seventy-one years old; store-keeper.

Examined by Mr. Church:

Q. 1. Elias F. Garman, a witness produced and examined on behalf of the complainants, testified that his age was forty; that he was living in York county, just below New Cumberland, and was an iron-workman, [see complainants' rejoinder, p. 2334;] do you know the person referred to?

A. Yes, sir.

Q. 2. Are you acquainted with the reputation of the said Elias F. Garman for truth and veracity?

[*Objected to, no foundation having as yet been laid for the question.*]

[*Question withdrawn.*]

Q. 3. How long have you known him?

A. Well, I think about ten years.

Q. 4. Are you acquainted with the reputation of the said Elias F. Garman for truth and veracity?

[*Objection renewed.*]

A. Yes, sir; I think I am, pretty well.

Q. 5. Is his reputation for truth and veracity good or bad?

[*Objections continued.*]

A. Well, not so—not very good.

Q. 6. Would you believe him under oath?

[*Objections continued.*]

A. I don't think I would.

Cross-examined by Mr. Howson, de bene esse:

Cross-Q. 7. What kind of a store do you keep?

A. I keep a regular country store—dry-goods and such things.

Cross-Q. 8. How far from Mr. Garman's residence is New Market?

A. Well, it's a little over a quarter of a mile—just above town—between a quarter and a half mile.

[*Complainants' counsel here requests that the further examination of this witness may be adjourned until such time as the witness Garman can be communicated with, and that for this purpose the further examination of the witness be adjourned until the afternoon session, the intervening time being employed, if defendants' counsel so desire, in the examination of such other witnesses as defendants may desire to produce; and in making this request complainants' counsel desire to state that the present testimony is an entire surprise to them, and has been sprung upon them at the last moment, without any notice being given to them by defendants of any purposed attempt to impeach the witness Garman.*

Defendants' counsel consents to the postponement of the cross-examination of this witness as requested, but as the time remaining for taking further testimony on behalf of defendants is so short, he will continue to produce more witnesses to the same point, and put in their direct examinations.]

2.30, P. M.

Resumed, pursuant to adjournment.

Same counsel present.

Mr. ELIAS F. GARMAN *being present, the cross-examination of the witness, Herman Long is resumed by Mr. Howson, de bene esse:*

Cross-Q. 9. Mr. Long, you have had some business dealings with Mr. Garman, haven't you?

A. Yes, sir.

Cross-Q. 10. That is to say, you sold him goods from your store for a considerable period of time, and continued to do so; isn't that so?

A. We continued to do so till we stopped—didn't come up to contract.

Cross-Q. 11. What contract do you mean, and when was that contract made?

A. Well, when I opened store there in New Cumberland I put my son in, and son-in-law—my son's name is Herman, same as mine; my son-in-law's name is George Rhoads. I told them I wanted them to be a little careful who they trusted—especially, I told them, that I didn't want them to put Garman's name in my books. After we had been keeping store there for a while, I got looking over the books and seen an account there in the book with Garman. I asked them then: "Didn't I tell you you shouldn't run a book-account with Mr. Garman?" They said: "Mr. Garman says he's got a contract now, and he says he's making

big wages—a contract with Musser & Company taking out logs—and if they'd let some of it stand on the books every month, he'd pay part of it every month, and when it was done he'd settle up the balance." And so, when he was through the contract, I asked him when he'd pay me any money on that bill; he said he wasn't through with the contract yet, and so I went over to Musser's office, and seen the clerk in the office, and I asked the clerk whether Mr. Garman had—

[*Objection is here made to the retailing by this witness of alleged conversations between himself and another party, not a witness, or to the repetition of hearsay not responsive to the question, irresponsive, evasive, and volunteered; and the Examiner is requested to read the question to the witness again, and the witness is requested to confine himself to the question.*]

[*Question re-read to witness.*]

A. Well, I can't tell you the date till I get the books. He made the contract with the boys. He said when his contract was done he'd settle up his account.

Cross-Q. 12. The fact is, that Mr. Garman owes you, or parties connected with you, money—or you say that he does so—isn't that it?

A. Yes, sir.

Cross-Q. 13. You have been called on to state that your debtor, Mr. Garman, is a person you would not believe under oath. Now, will you please tell us when and where you ever knew or heard of Mr. Garman taking an oath which he knew to be false?

[*Objected to as misleading and incompetent, the witness not having stated that he had ever known Mr. Garman to take a false oath, but that he would not believe him under oath.*

And counsel for defendants requests the counsel for complainants now conducting the cross-examination to please take his seat, and not stand up in front of the witness in a menacing attitude, as if he was going to eat him, or spring upon him and strangle him.]

A. I never said that—no, sir.

Cross-Q. 14. You have told us that you know the gentleman's reputation for truth and veracity; now please name to us all the persons you can recollect with whom you can remember having discussed Mr. Garman's reputation in those particulars.

A. Well, with a good many folks. I couldn't just mention the names. [Witness here interjects: "May I say a word? Why, we didn't finish about that contract—we stopped when I said to the clerk—"]

[*Counsel for complainants requests the Examiner to read the question again to the witness, and the witness to confine himself to the question.*

Question re-read.

Objected to, the question having been sufficiently answered already.]

A. Well, there's one man here in the office—Mr. Baughman; well, I can recollect a good many, but I can't just give the names.

Cross-Q. 16. The Mr. Baughman referred to in your last answer is the Joseph J. Baughman who testified immediately after you this morning, isn't he? [Witness here interjects: "I can give you another one if you want it."]

[*Complainants' counsel says: "Perhaps you had better answer my question first," and the Examiner is requested to re-read the question to the witness.*]

A. I don't know what time he testified; Mr. Baughman's here—Mr. Joseph J. Baughman.

Re-direct examination by Mr. Church:

Q. Q. 17. You were interrupted in answering question 11. I will ask the Examiner to read so much of your answer as you gave, after which you will please finish the answer.

[*Objected to as not reëxamination and as incompetent.*

Answer re-read to witness.

Question further objected to as calling for hearsay in regard to an alleged matter of business, and as calling for declarations of a party who was a stranger to the business.]

A. The clerk told me the account was settled up and there was twenty-one dollars in his favor on the book. When I went to Mr. Garman I told him: "Now, Mr. Garman, the clerk told me there was twenty-one dollars in your favor on the books—the clerk at Musser's;" Mr. Garman denied it then—that it was settled up.

[*Answer objected to as utterly immaterial and irrelevant, and the alleged declaration of Musser's clerk, as stated by this witness, further objected to as not evidence for any purpose whatever.*]

Deposition taken, reduced to writing, and by the witness affirmed and subscribed to before me, this 13th day of June, 1884.

PAUL CHARLTON,
Notary Public, Special Examiner.

HERMAN LONG.

HENRY S. RUPP, *being produced and affirmed, upon examination, saith:*

Examined by Mr. Jacobs:

Q. 1. You are the same Henry S. Rupp, are you not, who testified in this case on behalf of complainants at Philadelphia? [See complainants' printed record, p. 1128.]

A. Yes, sir.

Q. 2. Do you hold any office in Lower Allen township, Cumberland county, Pennsylvania, at present; and if so, what is it?

A I do; township clerk.

Q. 3. Will you look at the book which I now hand you, and state what is?

A. It is the book in which the records of the township are kept.

Q. 4. I find in that book, under date of April 18, 1874, a settlement by the township auditors of Lower Allen township of the accounts of the supervisors of said township, to wit: The account of Jacob S. Eshleman, and the account of Henry M. Bitner; said settlement appearing to have been made by Henry S. Rupp, Isaac Zimmerman, and James Brooks, auditors; will you look at those three names, and tell me in whose handwriting they are?

[*Objected to as incompetent at this time and as immaterial; objection to apply to all succeeding questions on the same line.*]

A. Well, they are in their own handwriting.

Q. 5. Are you the Henry S. Rupp whose name there appears as auditor?

A. Yes, sir.

Q. 6. For what year was that settlement made?

A. For the year 1873.

[*Counsel for defendants asks the Examiner to copy upon the record at this point the accounts and settlement referred to.*

Objected to by complainants' counsel as incompetent and immaterial.

The Examiner copies the accounts and settlement as follows:

"1874 Jacob S. Eshelman Supervisor of Lower Allen Township in account Cr. Dr.
Apl. 18

	Dr.		
		Work done on roads	489.82
		Time 70½ days at $1.50	105.75
		Collecting	37.87
		Auditing and room rent	12.00
		Room rent	
Tax collected	758.20	Paid to H. M. Bitner	83.18
Amt rec from former Supervisor	95.98	Laying tax 1 day	2.00
		Exhoneration	.75
		Balance due Township	122.81
	$854.18		$854.18

1874. Henry M. Bitner, Supervisor of Lower Allen Township in account—

		Dr.		Cr.
Apl. 18	Tax collected	665.68	Work done on roads	786.91
	Amt received from Jacob S. Eshleman	83.18	Time 14 days at $1.50	21.00
	Amt received from former Supervisor	95.98	Collecting	33.18
			Exhonoration	1.75
			Money received from former Supervisor Laying tax	2.00
		844.84		844.84

We the undersigned Auditors of Lower Allen township have this day examined the accounts of Jacob S. Eshleman and Henry M. Bitner Supervisors of above named Township and find a balance in their hands of One hundred & twenty two dollars & eighty-one cents.

Auditors { Henry S. Rupp
Isaac Zimmerman
James Brooks."]

Q. 7. Were you present at, and did you take part in, that settlement?

A. Yes, sir.

Q. 8. It has appeared in evidence that Lower Allen township was divided into two supervisors' districts, and that Henry M. Bitner was supervisor for the upper district in the year 1873; can you tell me who was supervisor in the upper district in the year 1872?

[*Objected to as incompetent, immaterial, and new matter.*]

A. Yes, sir; John Sprinkel was supervisor.

[*Defendants' counsel requests the Examiner to copy upon the record at this point the account of John Sprinkel.*

Same objections.

The Examiner copies said account, as follows:

"1873 John Sprinkle Supervisor of Lower Allen Township in account

	Dr.		Cr.
Tax collected	513.65	Work done on roads	532.87
Amt received from Danl Hart	122.90	Time 52 days $1.50	78.00
		Collecting,	25.68
	$636.55		636.55."]

Q 9. Same question as to 1871.

[*Same objections.*]

A. Yes, sir; Samuel M. Bitner.

[*Same request by defendants' counsel as to this account.*

Same objections.]

The Examiner copies said account as follows:

"1872. Samuel M. Bitner, Supervisor, in account with Lower Allen Township.

	Dr.		Cr.
		To work done on Road & Bridges,	595.26
		Time 41¼ days, at $1.50,	61.87
May 18, Money received from former Supervisor,	55.80	Exonerations,	13.86
Amt of Duplicate,	714.10	Fee for collecting,	35.01
		Paid J. K. Taylor,	53.00
		Paid to-day expenses,	10.90
	$769.90		$769.90"

Q. 10. Same question as to 1870.

[*Same objections.*]

A. Ezekiel Worley.

[*Same request by defendants' counsel as to this account.*

Same objections.

The Examiner copies said account as follows:

"1871 Ezekiel Worley (Supervisor) in account with Lower Allen Township.

	Dr		Cr
		June 6, Work done on roads & Bridges	325.53
		Time 40½ days at $1.50	60.74
June 6, Money in hands of former Supervisor	184.00	Exonerations	2.60
Amount of Duplicate	218.81	Fee for collecting tax	10.81
Rec. from Daniel Hart		Paid to Township	3.12
	402.81		402.81"

Q. 11. Same question as to 1869.

[*Same objections.*]

A. Yes, sir; Ezekiel Worley.

[*Same request by defendants' counsel as to the account.*

Same objections.

The Examiner copies said account as follows:

"1870 Ezekiel Worley Dr in account with Lower Allen Township Cr

		May 10, Work done on Roads	305.56
		Time 38½ days at 1.50	57.75
		Collection Fee	24.00
		Exonerations	1.20
		Use for horse	6.00
May 10, Cash received rec from former Supev's	141.26	Pd. Moyer	42.75
Amt of Duplicate	480.01	" over to Township	184.01
	621.27		621.27"

Q. 12. Same question as to 1868.

[*Same objections.*]

A. Yes, sir; Ezekiel Worley.

[*Same request by defendants' counsel as to this account.*

Same objections.

The Examiner copies said account as follows:

"1869 Ezl. Worley Dr. in account with Lower Allen Township Cr.

		May 13 work done on roads,	400,18
May 13 Cash received from former Sup	48,00	Time 38½ days	57,75
		Collection Fee	23,78
Amount of duplicate	478,23	Exonerations	2,60
Amt received from Fred. Sheely	105,34	For use of horse and wagon,	6,00
		Due the Township	141,26
	631,57		631,57"]

Q. 13. Same question as to 1867.

[*Same objections.*]

A. Yes, sir; John Strong.

[*Same request by defendants' counsel as to this account.*

Same objections.

The Examiner copies said account as follows:

"1868 John Strong, Supervisor, in account with Lower Allen Township, Cr

			Apl 25	By work done	385,70
			"	Time	51,50
			"	Exonerations	12,82
			"	Percentage	37,56
			"	Reuben Roth debt from last year	75,43
			"	Paid Auditors and expenses	8,50
			"	do to Sam. Hartzler, Sup	66,80
Apl 25	To Amt of Duplicate	731,31	"	Money paid to Auditors	96,00
"	Scoop sold	3,00			
		734,81			734,81."]

Q. 14. Same question as to 1866.

[*Same objections.*]

A. Yes, sir; Reuben Roth.

[*Same request by defendants' counsel as to this account.*

Same objections.

The Examiner copies said account as follows:

"1867, Dr. Reuben Roth, supervisor, in account with Lower Allen Township.

Dr.

"1867.					
			Mr 9	By work done	440,22
			" 9	" Time per day at 1.50	82,00
			Mr 9	Exonerations	9,47
			" 9	" Percentage	26,22
			" 9	" Paid Zearing for laying tax	2,00
Mrc 9	To amount of duplicate	533,98	9	Paid Roth interest on money borrowed first year	5,00
Mrc 9	To cash by the auditors	30,93			
		564,91			564,91"

Paid Reuben Roth twenty-six dollars and forty-four cents on account of money due said Reuben Roth by the township leaving balance due him fifty-seven dollars and one cent."]

Q. 15. Same question as to 1874.

[*Same objections.*]

A. Yes, sir; Allen Floyd.

[*Same request by defendants' counsel as to this account.*

Same objections.

The Examiner copies said account as follows:

"1875 Allen Floyd, Supervisor, Dr in account with Lower Allen Township.

June 7 Money received from former supervisor	61,40	Work on roads and other expenses	364,13
Amt of duplicate	348,60	Time 71 days at 1.50	106,50
Rec. from L Eshenbacher	45,01	Exhonerations,	4,04
Due from Township	36,83	Collecting	17,22
	491,89		491,89"

All the accounts which have been copied upon the record appear to have been settled by auditors, of whom, in each case, Henry S. Rupp is one.]

Q. 16. Were you or not township auditor during those years, and did you or not take part in the settlement of those accounts?

A. I was one of the auditors and helped to settle the accounts.

Q. 17. Will you look at the accounts for the year 1875 and tell me which of the two supervisors belonged to the upper district?

A. Daniel Weaver.

[*Defendants' counsel requests the Examiner to copy upon the record at this point the account of Daniel Weaver.*

Objected to as incompetent and immaterial.

The Examiner copies said account as follows:

"1876. Daniel Weaver, Supervisor, in account with L. Allen township.

		Cr.	
		By exhonerations,	2,56
		" Time and expenses on roads, (self,)	109,89
June 10. To amt. of duplicate, Dr.,	396,98	" per centage for collection tax,	19,72
To amt. of cash paid by auditors,	27,75	" material and time for hands,	292,56
	$424,73		$424,73"

Q. 18. Same question as to the year 1876.

A. Andrew Shell.

[*Same request by defendants' counsel as to this account.*

The Examiner copies said account as follows:

"1877 Andrew Shell, supervisor, in account with L. Allen township.

May 5, to Amount of Duplicate Dr.		Cr.	
Money received from J. S. Eshleman L. end	$577.65		
	177.92	Expenditures	$849.27."

Q. 19. Same question as to the year 1877.

A. M. D. Weirich. There I was auditor again.

[*Same request by defendants' counsel as to this account.*

The Examiner copies said account as follows:

"1878 M. D. Weirich, supervisor, in account with Lower Allen township.

		By amt paid expenses in repairing road 878.27	878,27
		Exonerations	4,40
		Work 99 days at 1.50	148,50
March 27 Amt of duplicate	929,13	Fees for collecting,	46,23
Amt. received from H.Zimmerman, Sup of Lower end of said township	156,37	Blacksmithing,	4,10
		Laying tax and settling with auditors	4,00
	1085,50	Amt recei	1085,50."]

Q. 20. Same question as to 1878.

A. Daniel Weaver.

[*Same request by defendants' counsel as to this account.*

The Examiner copies this account as follows:

Daniel Weaver, supervisor, in account with Lower Allen Township.

		Amt expenses in repairing road,	329,84
		Time, 40 days at 1,50	60,00
		Exonerations	7,67
		Commission for collecting tax	25,61
		Money paid over to township,	96,78
			519,90
		Layin tax	2,50
"1879 Ap 7 Amt of Duplicate	519,90		522,40."]

Q. 21. Same question as to 1879.

A. Henry Smyser.

[*Same request by defendants' counsel as to this account.*

The Examiner copies this account as follows:

"1880 Henry Smyser in account with Lower Allen Township;

		Amont of expenses	283,80
		time 32 day at 1,50	48,00
April 5th Amont of Duplicate	$417,28	Exoneration	4,49
		Col fees	20,58
Rec from township	34,58	balance in hand	94,99
	451,86		$451.86."]

Q. 22. Same question as to 1880.

A. Henry Smyser.

[*Same request by defendants' counsel as to this account.*

The Examiner copies this account as follows:

"1881 Henry Smyser in account with Lower Allen township, March 14th.

		Amount of expenses	219.19
		Time 35 days at 1.50	52.50
		Exonorations	3.53
Amount of Duplicate	301.18	Col fees	14.88
Rec from township	119.81	Bal in hand	130.89
	$420.99		$420.99"

Q. 22½. Same question as to 1881.

A. Henry Heikes.

[*Same request by defendants' counsel as to this account.*

The Examiner copies this account as follows:

"1882 Henry Heikes in account with Lower Allen Township, March 13,

		Amount of expenses	351.30
		Time 38 days at 1.50	57.00
		Exonorations	3.46
		Col fees	19.94
Amount of Duplicate	402.35	Settling with Auditors	4.50
Rec. from Township	125.49	Balance in Hands	91.64
	$527.84		527.84"]

Q. 23. Same question as to 1882.

A. Yes, sir; Eli Dietz.

[*Same request by defendants' counsel as to this account.*

The Examiner copies this account as follows:

"1883 Eli Dietz in account with Lower Allen Township.

Mar. 12, Amount of Duplicate	455,01		
Mar. 12, Rec from Township	42,50	Mar. 12, Expenses for work	466,6
Mar. 12, " " Henry Darr	46,41	Mar. 12, Time 59½ days at 1.50	89,25
Mar. 12, Due from Township	37,35	Mar. 12, Exonerations	2,81
		Collecting taxes	22,61
	$581,27		$581,27"]

Q. 24. Same question as to 1883.

A. Eli Dietz.

[*Same request by defendants' counsel as to this account. The Examiner copies this account as follows:*

"1874 Eli Dietz in account with Lower Allen Township.

	Dr	1884	Cr
March 8, Amount of Duplicate	447,68	March 8, Work	430,46
March 8, Rec from Samuel Kimmel Sup	106,29	Time 64 days	96,00
		Exhonerations	5,40
		Collecting	22,11
	553,97		553,97"]

Q. 25. It appears from the above accounts that from the year 1866 to the year 1875, both years inclusive, Henry M. Bitner expended more money upon the work of the township, and, so far as the accounts show, was allowed less pay for his time than any other supervisor in the upper district. As you were one of the auditors, and took part in the settlement of all the accounts during that entire period, will you explain how that was?

[***Objected to as incompetent and immaterial, and not rebuttal or surrejoinder.***]

A. Mr. Bitner gave most of the work out by contract, and did not look after it himself, as the other supervisors done before.

Q. 26. Did that fact appear before the auditors or not?

[***Objections continued, and it is furthermore objected that if such a question could be proper at this time at all, no sufficient foundation was laid for it in the cross-examination of the witness Bitner.***]

A. It did appear before them. It didn't show in his accounts, but they knew it was the case.

[*Answer objected to as not evidence.*]

Q. 27. Was there any difficulty in settling his account when it came before the auditors?

[*Same objections as to the last question.*]

A. There was no difficulty, although the auditors were of the opinion that it was the true way to keep the roads in repair, and that also some of the bills were too high for the amount of work done by the parties.

Q. 28. What do you mean by the expression, "It was the true way to keep the roads in repair?"

[***Same objection, with the further objection that the expression explains itself.***]

A. I meant the true way so far as economy's concerned—so far as economy in keeping the roads in repair is concerned.

Q. 29. What I want to get at is this: What was the true way to keep the roads in repair?

[*Same objections.*]

A. The true way was for the supervisor to hire the hands to work on the road and supervise them himself.

Adjourned to 8, P. M.

8, P. M.

Resumed, pursuant to adjournment.

[*Entire deposition objected to as immaterial and incompetent.*]

Cross-examined by Mr. Howson, de bene esse:

Cross-Q. 30. Referring to the Andrew Shell, who appears from your book to have been supervisor of the upper district of Lower Allen township, in the year 1876—it has been stated in evidence here that the gentleman died in the year 1877—can you tell us in what time of the year it was he died—whether before or after the auditing of this account in May, 1877, and if before, how long before?

[*Objected to as incompetent and not proper cross-examination.*]

A. It was before this account was audited—I can't tell for a certainty how long before.

Deposition taken and reduced to writing by me, and by the witness affirmed to and subscribed in my presence this 12th day of June, A. D. 1884.

PAUL CHARLTON,
Notary Public, Special Examiner.

HARRY S. RUPP.

Adjourned until Friday, 13th June, 1884, at 10, A. M.

JUNE 13, 1884, 10, A. M

Examination resumed.

Present, Mr. Smith and Mr. Howson for complainants, and Mr. Hill, Mr. Jacobs, and Mr. Church for respondents.

JOHN H. HARPER, *being produced, affirmed, and examined, saith:*

Examined by Mr. Hill:

I am the same John H. Harper who was examined as a witness on be-

half of respondents in January, 1884. (See respondents' printed surrebutting record, p. 653.)

Q. 1. Has anybody representing the Bell Telephone Company recently been to see you; if so, who, and about what time?

A. On last Saturday, about half-past twelve o'clock; I don't know the name, but I would know it if I would hear it. He has got a mixed suit on, like the man who just went in here. It was not Mr. Storrow; it was another man.

Q. 2. Was the name Brooks?

A. That is the name.

Q. 3. When he called to see you that day, how long did he remain with you?

A. Well, maybe ten or fifteen minutes.

Q. 4. Why didn't you talk with him longer at that time?

A. I hadn't time; I had my work to do; we work by the hour.

Q. 5. When did you see him again?

A. Saturday evening—him and Beers.

Q. 6. Did they come to your house to see you?

A. Yes, sir.

Q. 7. Did they, or either of them, tell you that day what they had come to see you for?

A. Yes, sir.

Q. 8. What?

A. Well, about the boring of the pipes up there—whether I might be wrong in my dates. They read me the evidence of—I can tell you pretty near all—of the Heisley boys, and the mother, and the blacksmith—I can't mention his name now—his evidence; Mr. Cowen's, Mr. Swartz's, Mr. Dissinger's, Eppler's, Draper's daughter's, and young Kissinger's, and the stone-mason's, and then there is a young man up there whose name I can't remember.

Q. 9. Do you mean the stone-mason, Jesse Wagner?

A. Yes, Wagner; I could have mentioned his name, I am well acquainted with him.

Q. 10. They brought a bundle of books and papers with them, did they?

A. Yes, sir.

Q. 11. Did they tell you about the evidence of any parties which they did not read?

A. Oh, yes, John Wenrick's; they didn't read his to me, but just

told me what he said; I told them I didn't care about hearing it. There is one thing in there—they didn't read those to me all through—I mustn't say that—they didn't read the whole of them; they picked them out and read parts of them. The most was what was concerning my affair, you know—the pipes—there was some that they didn't read.

Q. 12. Why didn't you care about hearing John Wenrick's?

A. Well, there is people in the world that you don't care about; and there was other ones that I wanted to hear.

Q. 13. Did they tell you that any witnesses who were examined on behalf of the People's Telephone Company had come back and changed their testimony?

A. Yes, sir; that was the cause they came to me; they told me that those had changed their opinion.

Q. 14. Go on and give us a full statement of what they said to you that evening in the course of that conversation, and what arguments they used, if any, to try to persuade you to change your testimony?

A. They told me to pick out men that I thought responsible men; I picked Swartz. Cowen, Dissinger, and Jesse Wagner, and told them I wanted to hear their evidence. They gave me Jesse Wagner's, then about the walling up of the ram in 1878—fall of 1878 I think he said. I told them then: "Was the ram in when he walled it up?" I asked them. They said it was; the ground had been throwed out fresh. I told them that couldn't convince me yet, because if it had been in for six months or two years it would have had to be throwed out again, as it would have caved in in that time, and it would have looked fresh anyhow.

Then he brought me up the Heisley boys about the auger; said there was no auger in the neighborhood before 1875. I told them that according to Adams's evidence he bored in 1874. And then he asked me about the reamer. There was no reamer made until 1876. I told him that the logs I saw wasn't reamed, and that couldn't convince me, then. He told me, then, that I should study over it—see whether I wasn't mistaken in the year—it might have been some other time that I was up there. I told him that it couldn't have been even if I had been other times there, for the time I saw the pipe was just as fresh to me as if it was yesterday. Well, he told me, then, that I should consider over it; that if there was any doubt about me—that I thought I might be wrong—that they were entitled to the doubt. That is about as near as I can think of. He told

me, too, that I had nothing at stake, and they had. I told him I had nothing but my principle. That was about all.

Q. 15. During that conversation, did they say anything about bored wooden pipes being liable to crack by the effect of the weather if they were allowed to lie exposed two or three years; if so, what did they say, and what did you reply?

A. Yes, sir. I told them if they bored the heart out of a stick it wouldn't crack. They told me, then, that painting them on the end would keep them from cracking; I told them I never tried that. Beers told me, then, that he noticed those walnut logs shipped on the cars were all clamped with an iron—a kind of a crow-foot, with four different prongs—drove in at the ends, to keep them from cracking. I told him they couldn't be bored, or dared not be bored, for the purpose they were for.

Q. 16. Did they say anything about your being the only important witness who had not changed his testimony; if so, what did they say, and what did you reply?

A. Yes, sir; I told them if they left me stand by myself I would stay, for what I saw with my eyes. They can't convince me, in my opinion, about the boring of the logs. I told them if they had laid there for two years, or for three years, before they were put in, I saw them at the time I saw them, anyhow, and I didn't see them put in.

Q. 17. Did you find Mr. Brooks to be a very fine talker or not?

A. He is a pretty nice man to talk with.

Cross-examined by Mr. Smith:

Cross-Q. 18. In your fourteenth answer, among other things, you used this language: "I told him that it couldn't have been even if I had been other times there, for the time that I saw the pipes was as fresh to me as if it was yesterday." Did you mean to suggest by that language that you wasn't on Mr. Kissinger's premises but once during the time you lived in the Fenn house, from the spring of 1875 to the spring of 1877?

A. No, sir; but such occasions as I was there that time don't occur very often, and that is the reason I recollect it.

Cross-Q. 19. How far was your house from Kissinger's house?

[*Objected to; the examination-in-chief was confined to the interviews with Mr. Brooks, and with Mr. Brooks and Mr. Beers, at the witness' house at Duncannon last week, and for the purpose of showing the character of the efforts which the complainants have been making, and apparently are still*

making, to work upon the respondents' witnesses; and any cross-examination that goes outside of that interview is new matter, upon which the complainants, if they proceed to interrogate the witness, will make him their own.]

A. He adjoined the back end of the farm I lived on. It is over a quarter of a mile from his house to my house, anyhow between a quarter of a mile and a half between the two houses—right straight through the fields; around by the road it is farther.

Cross-Q. 20. I understand, from that part of your answer to the 14th interrogatory which I have read, and from your answer to my first interrogatory, that during the two years when you lived in the Fenn house you may have been at Mr. Kissinger's more than once; is that correct?

A. Yes, sir.

Cross-Q. 21. Could you give us any idea how often you were there?

[*Same objection.*]

A. No, sir; I could not.

Re-direct by Mr. Hill, de bene esse:

Q. Q. 22. Did you ever take a breed-sow to the Draper farm at any other time except the time mentioned in your former deposition, to wit, about August or September, 1875?

A. No, sir.

Examination taken, reduced to writing, and by the witness affirmed and subscribed to before me, this 13th day of June, 1884.

FRED. M. OTT,
Examiner.

JOHN H. HARPER.

[*Respondents now demand of the complainants that they shall call off their pack and let the respondents' witnesses alone; and they call the attention of the Court at this point to the extraordinary, unprofessional, and outrageous conduct of the complainants in sending their hired agents around to argue and persuade respondents' witnesses to vary their testimony, not by reason of any new facts within their own memory, but by arguing to them the case upon the testimony of other witnesses, and trying to influence them by the conduct of other witnesses, upon whom they have been similarly working. And in the language of complainants' counsel yesterday, they shall ask the Court "to disregard and disbelieve" the testimony of any witnesses who have thus been worked upon, so far as such testimony has ex-*

pressed or may express any change of belief resulting from the witness' estimate of the weight of the evidence as thus presented to them, and shall ask the Court to rely upon the independent memory of such witnesses, testifying from their own memory and recollection, and without regard to the supposed evidence of others.]

R. A. Ross, *being produced, sworn, and examined, saith:*

Examined by Mr. Hill:

I am nineteen years of age; I reside at New Cumberland, Cumberland county, Penna.; I am attending the Pennsylvania Military Academy at Chester, Penna.

Q. 1. Do you know John M. Fisher, George Ditlow, Elias Garman, and Jacob Evans?

A. Yes, sir.

Q. 2. Mr. Fisher has testified recently (see complainants' printed record, p. 2103, *et seq.*) to the effect that in the summer of 1883, about hay-making time, Jacob Evans, George Ditlow, Elias Garman, John M. Fisher, and Mrs. Jacob Evans were in front of his (Fisher's) house, at the road, when John C. Comfort came along in a buggy with a lady, and had some conversation with the party. Mr. Ditlow and Mr. Garman have also testified to substantially the same thing, and Mr. Garman also testified that a Mr. R. A. Ross was present at the same time. Do you remember anything about being in front of Mr. Fisher's house, at the road, with those persons at that time, and John C. Comfort's coming along in a buggy with a lady and conversing with the party there?

A. Yes, sir.

Q. 3. Where were you standing when Mr. Comfort rode up and commenced the conversation?

A. I was standing at the fence, about three feet from the buggy.

Q. 4. Do you remember what Mr. Comfort first said when he drove up?

A. Yes, sir.

Q. 5. Please state what it was.

A. "The lost is found."

Q. 6. Mr. Fisher has testified that, while Mr. Comfort was there, he spoke to Jacob Evans, and said: "Well, Jacob, what is your opinion on the talking-machine to-day?" And that Mr. Evans replied: "About the same; I never saw it, and don't believe there was one." Mr. Ditlow and Mr. Garman have testified to substantially the same thing; will you

please state whether those words were or were not said between Mr. Comfort and Mr. Evans while you were there that day?

[*Objected to as leading, and as an improper manner of interrogating the witness.*]

A. No, sir; they were not.

Q. 7. Do you remember what Mr. Comfort did ask Mr. Evans? If so, please state, and state Mr. Evans' reply.

A. Yes, sir; Comfort asked Jake whether Jacobs and Drawbaugh had been down lately. He said they had been down lately.

Q. 8. What did Mr. Comfort then ask him, and what did Mr. Evans reply?

A. Comfort asked him whether they had much to say about it; Mr. Evans said they hadn't much to say about it.

Q. 9. What next passed between Comfort and Evans?

A. I don't remember.

Q. 10. Do you remember whether or not, during that conversation, any question was asked as to which side was coming out ahead? If so, please state, according to your recollection, what the question was, who asked it, and what the reply was.

A. Evans asked Comfort which side he thought would come out ahead. He said the Bell, of course; that they had three to one.

Q. 11. After the conversation about the talking-machine was over, was there any other conversation before Comfort drove away?

A. Yes, sir.

Q. 12. Did you remain within hearing of the conversation from the time Mr. Comfort drove up until he drove away, or not?

A. Yes, sir.

Q. 13. Mr. Garman has testified that while Mr. Comfort was talking to Mr. and Mrs. Evans you were at the opposite side of the road—perhaps from twenty to forty feet away—under a mulberry tree, or on it; is that the fact or not?

A. No, sir.

Q. 14. Were you under or on the mulberry tree that day? If so, was it before Mr. Comfort drove up, or while he was there, or after he drove away?

A. I was on the mulberry tree before he drove up.

Recess until 2, P. M.

Cross examination waived by Mr. Storrow.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me, this 13th day of June, 1884.

FRED. M. OTT,
Examiner.

R. A. Ross.

JOSEPH J. BAUGHMAN, *being produced and affirmed, upon examination saith:*

I live at New Cumberland, Cumberland county, Pennsylvania; am thirty-three years old; am a farmer and cattle-grower on the plains.

Examined by Mr. Melville Church:

Q. 1. Elias F. Garman, a witness produced and examined on behalf of the complainants, testified that his age was forty; that he was living in York county, just below New Cumberland, and was an iron-workman, (see complainants' rejoiner, p. 2334;) do you know the person referred to; and if yes, how long have you known him?

A. I have known him for about twelve years.

Q. 2. Are you acquainted with the reputation of the said Elias F. Garman for truth and veracity in the community in which he lives?

[*Objected to, no proper foundation having as yet been laid for the question.*]

A. I am.

Q. 3. Is it good or bad?

[*Same objection.*]

A. Bad.

Q. 4. Would you believe him under oath?

[*Same objection.*]

A. I would not.

[*Same request and reply in regard to the cross-examination of this witness as to that of Herman Long, the witness next preceding.*]

Cross-examination of witness J. J. Baughman postponed by agreement of counsel from the sitting of this morning.

By Mr. Howson, de bene esse:

Cross-Q. 5. Mr. Baughman, you have had business dealings with Mr. Garman, and he is in your debt, or you suppose him so to be; isn't that the case?

A. Well, that is a matter of my own private business.

Cross-Q. 6. It is the truth, however, is it not; and if yes, please say so?

A. It is.

Deposition taken and reduced to writing by me, and by the witness affirmed to and subscribed in my presence on this 13th day of June, 1884.

PAUL CHARLTON,
Special Examiner, Notary Public.

JOSEPH J. BAUGHMAN.

GEORGE W. BUTTORFF, *being produced and affirmed, upon examination saith:*

I live at New Cumberland, Cumberland county, Penna.; am forty-three years old; merchant.

Examined by Mr. Melville Church:

Q. 1. Elias F. Garman, a witness produced and examined on behalf of the complainants, testified that his age was forty; that he was living in York county, just below New Cumberland, and was an iron-workman (see complainants' rejoinder, p. 2334;) do you know the person referred to; and if yes, how long have you known him?

A. I have known him about four years.

Q. 2. Are you acquainted with the general reputation of the said Elias F. Garman for truth and veracity in the community in which he lives?

[*Objected to, no proper foundation having as yet been laid for the question.*]

A. I am.

Q. 3. Is it good or bad?

[*Same objection.*]

A. It's bad.

Q. 4. Would you believe him under oath?

[*Same objection.*]

A. I would not, sir.

[*Same request and reply in regard to the cross-examination of this witness as to that of Joseph J. Baughmsn, the witness next preceding.*]

Cross-examination of the witness, George W. Buttorff, postponed by agreement of counsel from the sitting of this morning.

By Mr. Howson, de bene esse:

Cross-Q. 5. Mr. Buttorff, you have had business dealings with Mr. Garman, and he is in your debt, or you believe him so to be; isn't that the case?

A. Yes, sir, I believe him so to be—know him so to be.

Re-direct examination by Mr. Melville Church:

Q. Q. 6. State under what circumstances Mr. Garman came to be in your debt.

[*Objected to as immaterial and incompetent.*]

A. Well, I don't know, but I think it's—I didn't come over here to open up our account with Mr. Garman—it don't help to collect it one bit.

Deposition taken and reduced to writing by me, and by the witness affirmed to and subscribed in my presence this 13th day of June, 1884.

PAUL CHARLTON,
Notary Public, Special Examiner.

GEO. W. BUTTORFF.

CHRISTIAN HIMELREICH, *being produced and sworn, upon examination saith:*

I live at Bridgeport, Cumberland county, Pennsylvania; am sixty-one years old; laborer.

Examined by Mr. Church:

Q. 1. Elias F. Garman, a witness produced and examined on behalf of the complainants, testified that his age was forty, that he was living in York county, just below New Cumberland, and was an iron-

workman, (see complainants' rejoinder, p. 2334;) do you know the person referred to, and if so how long have you known him?

A. Well, I've known him for the last eight years, I guess; he lived about two years next me, and moved away about six years ago—about eight years, I think.

Q. 2. Are you acquainted with the general reputation of the said Elias F. Garman for truth and veracity in the vicinity in which he lives?

[*Objected to, no proper foundation having as yet been laid for the question.*]

A. I don't know about it now, for he's moved away from me, but I can tell what it was when he lived next me.

Q. 3. Please tell us what it was when he lived next you.

[*Objected to on the same grounds, and furthermore as incompetent, for the reason, among others, that the question refers to a period too remote.*]

A. Well, that was his reputation there among the neighbors—that Elias Garman wasn't to be believed, that he spun pretty long yarns, and told what wasn't so.

[*Deposition objected to as incompetent and immaterial.*]

[*Same request and reply in regard to the cross-examination of this witness as to that of George W. Buttorff, the witness next preceding.*

Cross-examination of the witness, Christian Himmelreich, postponed by agreement of counsel from the sitting of this morning, waived.]

Deposition taken and reduced to writing by me, and by the witness sworn to and subscribed in my presence, this 13th day of June, 1884.

PAUL CHARLTON,
Special Examiner, Notary Public.

C. HIMELREICH.

[*Counsel for defendants offer in evidence six photographic representations of the Kissinger place, or parts thereof, taken May 28, 1884, and requests the Examiner to mark the same "Defendants' Exhibits, Photographs of Kissinger Place, Nos. 1–6 inclusive."*

Complainants do not admit that the said photographs accurately represent the premises in question at any time or times material in this contro-

versy, and especially object that said pictures show fences and buildings which did not exist upon the premises at said material times.

Complainants waive formal proof of the taking of the pictures at the time stated in the proffer.]

ROBERT S. PROWELL, *being produced, affirmed, and examined, saith:*

Examined by Mr. Church:

My age is twenty-five; I reside at New Cumberland, Cumberland county, Penna.; I am a physician and druggist.

Q. 1. Elias F. Garman, a witness produced and examined on behalf of the complainants, testified that his age was forty; that he was living in York county, just below New Cumberland, and was an iron-workman (see complainants' printed record in rejoinder, page 2334,); do you know the person referred to; and, if yes, how long have you known him?

A. I know him, and have known him for three or four years, at least.

Q. 2. Are you acquainted with the general reputation of the said Elias F. Garman for truth and veracity in the community in which he lives?

A. Yes, sir.

Q. 3. Is it good or bad?

A. It is a little hard to answer that.

Q. 4. How would you answer it?

[*Objected to in view of the last answer.*]

A. I would trust him, but I have heard men say that they wouldn't trust him.

[*Deposition objected to as incompetent and immaterial, and cross-examination waived by Mr. Howson.*]

Examination taken, reduced to writing, and by the witness affirmed and subscribed to before me, this 13th day of June, A. D. 1884.

FRED. M. OTT,
Examiner.

ROBERT S. PROWELL.

[*Counsel for defendants offers in evidence the following certified copy of the record of the Court of Common Pleas of Clinton county, Pennsylvania, No. 9, September session*, 1869.

Copied by the Examiner as follows:

"Copy of report of Commissioners Appointed by Act of Assembly to run County lines of Clinton and Potter County:

In pursuance of An Act of Assembly approved the third (3) day of April A. D. 1869, we entered upon the ground and return marked and established the original County Line, being the Northern boundary line of Clinton county and the Southern line of potter County agreeably to the above plan, Beginning at a White Pine made for the N. E. Corner of Cameron County thence South, Eighty seven and one half degrees East Nineteen Miles, Three hundred and thirteen perches to a Birch on the west line of the County of Lycoming marked—Corner—C. L. Potter.

Witness our hands this 29th day of October, A. D., 1869.

(Signed)
A. H. McHenry }
J. M. Spafford } Commissioners.

Report. Filed and Entered Nov. 1, 1869.

A draft or plot of above is attached to said report.

Commonwealth of Pennsylvania }
County of Clinton } *ss.*

I L. R. McGill, Prothonotary of the Court of Common Pleas in and for said County, do hereby certify that the foregoing is a full, true and correct copy of report of Commissioners appointed by act of Assembly to run County Lines between Clinton and Potter Counties, as the same remains of record before the said Court at No. 9 of September Sess. A. D. 1869.

Seal of the Court of Common Pleas of Clinton County, Pa.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court this 31st day of March, A. D. 1884.

L. R. McGill,
Prothonotary.

I Charles A. Mayer, President Judge of the 25th Judicial District, composed of the Counties of Clinton, Cameron, and Elk, do certify that L. R. McGill, by whom the annexed record, certificate and attestation were made and given, and who in his own proper handwriting thereunto subscribed his name and affixed the seal of the Court of Common Pleas of said County was at the time of so doing and now is Prothonotary, in and for said County of Clinton, in the Commonwealth of Pennsylvania, duly commissioned and qualified, to all of whose acts as such full faith and credit are and ought to be given as well in Courts of judicature as elsewhere, and that the said record, certificate and attestation are in due form of law, and made by the proper officer.

Charles A. Mayer,
President Judge.

Commonwealth of Pennsylvania, } ss.
County of Clinton, }

I L. R. McGill, Prothonotary of the Court of Common Pleas in and for said county, do certify that the Honorable Charles A. Mayer, by whom the foregoing attestation was made, and who has thereunto subscribed his name was at the time of making thereof and still is President Judge of the Court of Common Pleas, Orphans' Court and Court of Quarter Sessions of the Peace in and for said County, duly commissioned and qualified; to all whose acts as such full faith and credit are and ought to be given, as well in Courts of judicature or elsewhere.

Seal of the Court of Common Pleas of Clinton County, Pa.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, this thirty-first day of March, A. D., 1884.

L. R. McGill,
Prothonotary."

[*Counsel for defendants states that the reason why the above record was not offered in evidence during the taking of defendants' sur-rebutting testimony is because, by reason of the absence of the president judge of Clinton county from his district, the proper certificate could not be obtained until after said sur-rebutting testimony was closed.*

Certificate objected to as immaterial and irrelevant.]

Recess until 2, P. M., this day.

JUNE 13, 1884, 7.30, P. M.

Examination resumed.

Present, Mr. Storrow and Mr. Smith for complainants, and Mr. Hill, Mr. Jacobs, and Mr. Church for respondents.

Respondents' counsel announce that their evidence in sur-rejoinder is now closed.

Complainants' counsel announce that they intend to take testimony in reply to the sur-rejoinder, not to exceed ten witnesses, and to begin to-morrow, June 14, 1884, at 10, A. M., at Harrisburg, and to continue from day to day until closed.

FRED. M. OTT,
Examiner.

I hereby certify that the foregoing depositions of witnesses on behalf of respondents in sur-rejoinder were begun at Harrisburg on the fourth day of June, 1884, and completed on the thirteenth day of June 1884, having been adjourned from time to time as set forth in the foregoing record; that the several witnesses were duly sworn or affirmed by me, and subscribed to their several depositions in my presence, as set forth, except such witnesses as were by consent of counsel examined before Paul Charlton, Esq.; a notary public of the city of Harrisburg, Pa., as appears upon the foregoing record; also, that the exhibits referred to in the said depositions were produced before me as stated, and were left in my custody, as were also the exhibits put in evidence before the said Paul Charlton, Esq.; and that the statements and stipulations of counsel referred to and set forth in said record were entered into before me as therein set forth.

Witness my hand this 13th day of June, 1884.

FRED. M. OTT,
Examiner.

TESTIMONY FOR RESPONDENTS IN SUR-RE-REJOINDER.

BEFORE FRED. M. OTT, SPECIAL EXAMINER, AT NO. 13, NORTH THIRD STREET, HARRISBURG, PA., JUNE 20, 1884, 8, P. M.

Present, Mr. Storrow and Mr. Howson for complainants, and Mr. Hill, Mr. Jacobs, and Mr. Melville Church for respondents.

JOHN B. DRAPER, *being produced, sworn, and examined, saith:*

Examined by Mr. Hill:

My age is twenty-two; I reside in Dover, Delaware; I am in the phosphate business with my father.

Q. 1. Is your father Mr. Thomas Draper, of Dover, Delaware, who has formerly testified as a witness in this case?

A. Yes, sir.

Q. 2. Were you in the city of Philadelphia, Pa., at any time during the months of April or May, 1884?

A. I was.

Q. 3. What business took you up there?

A. I went up to see about getting a load of lime for the captain of our schooner.

Q. 4. About what time in April or May was it that you were at Philadelphia on that occasion?

A. I think it was the first or second Saturday in May.

Q. 5. While you were there in Philadelphia that day, did you see anybody that is connected in any way with this suit; if so, whom?

A. Mr. Storrow.

Q. 6. Mr. Storrow, who is here present as counsel?

A. Yes, sir.

Q. 7. Where did you see him?

A. At the Hotel Lafayette.

Q. 8. Did you have any conversation with him there that day?

A. I did.

Q. 9. Will you please state what that conversation was as near as you remember it?

A. To the best of my knowledge I told him that father had a letter from Kissinger dated May 30, 1875.

Q. 10. Did you tell him anything about the contents of that letter?

A. I told him what was in it as near as I could remember from hearing it read a few days previous.

Q. 11. Do you remember anything that you told him was in the letter?

A. Yes, sir.

Q. 12. State what you remember of telling him was in the letter.

A. I told him that the letter mentioned some iron pipe that could be had, either—somewheres up here; I don't know where.

Q. 13. How long was your interview with Mr. Storrow that day?

A. I think it was from three to five minutes—somewheres along there; it was very brief at any rate.

Q. 14. Why did you go to the Hotel Lafayette that day?

A. Mr. Comfort told me that if I found any letters, or knew of any, concerning the ram to let him know.

Q. 15. And was it in compliance with that request that you went to the Hotel Lafayette and informed Mr. Storrow as you did?

A. I called for Mr. Comfort at the Hotel Lafayette.

Q. 16. And did you see Mr. Comfort there?

A. No, sir.

Q. 17. You have stated that you told Mr. Storrow the contents of the letter as nearly as you could remember from hearing it read a few days before; had you ever read the letter yourself before you saw Mr. Storrow at Philadelphia on the occasion referred to?

A. No, sir.

Cross-examined by Mr. Storrow:

Cross-Q. 18. Please to look at the letter and envelope now shown you, and state in whose handwriting they are, including the signature to the letter.

A. It is father's, I think.

[*Letter and envelope put in evidence, and are as follows:*

The post-mark is "Dover, May 2, Del."

The envelope addressed: "J. J. Storrow, Att'y-at-Law, Hotel Lafayette, Broad & Chestnut Sts., Philad Pa." The letter, as follows:

"DOVER DELA May 1st 1884

Mr. J. J. Storrow Dear Sir My Daughter told me since she came home that the statement on my diary of the settlement of 1876 showed when pho-

tographed that there had been some figures rubbed out and the sixty Dollars written over them and that she thought that Mr. Comfort believed or rather insinuated that I or some one had done it on purpose and that no one on earth could make him believe that I was at Drawbaugh's in 1874 now I dont care a fig what he or anyone else believes nor do I care about the rubbing out of the figures, anyone with a half a share of common sence can see at a glance what was done and it is but a common occurrence in accounts. The first two lines were added up before the $60 was entered; had I intended to cheat any one I should most undoubtedly have rubbed the figures and lines and not have left it in that way. I am not doing that sort of a business. As I told you when I was at your place, you are all alike to me; I don't know who is entitled to a judgment nor do I care so it goes right. This much I do know that I was at Drawbaugh's in 1874 & saw his instruments. The Bell Company might have been for years before that for anything that I know. I could have shown you a letter that would have convinced you in a moment that I was correct in my statement, but I could not get the consent of my mind that that would be doing right nor have I ever shown it to the company or let them know that I had it. I wish I did know who is right. I am convinced now that I was mistaken about the time the ram was put in. I feel sure that was not put in until 1878.

Ever truly,

THOMAS DRAPER.

I may possibly be up next week."

[*Introduction of the letter and envelope objected to on the ground that they are utterly immaterial, and their statements not competent evidence for any purpose; and on the further ground that they are new matter not inquired about in the examination-in-chief, nor referred to in any way whatever. And, introduced as they now are by complainants' counsel without any relevancy to the examination-in-chief of this witness, if the statements contained in them are to be used as evidence, the complainants must be bound by them; for they are the evidence of complainants and not of respondents.*

Complainants' counsel, Mr. Storrow, states that he at once communicated to his associate, Mr. Chauncey Smith, then in Philadelphia, the contents of Mr. Draper's letter of May 1st, now put in evidence, and the statement made to him by Mr. John B. Draper; that he thereupon, with the approval of Mr. Smith, wrote to Mr. Thomas Draper the letter of May 2, put in evidence by the defendants in Mr. Draper's re-direct answer; that Mr. Smith and Mr. Storrow determined that no communication should be held with Mr. Draper on the subject of the Kissinger letter referred to, by any one connected with the Bell Company; and that no communication was held with Mr. Draper, directly or indirectly, nor any interview had with him, nor any intimation about the contents of the Kissinger letter ob-

tained, except as disclosed by the foregoing letter and statement, until after the defendants' counsel had visited Mr. Draper, and, as complainants' counsel is informed, had seen the Kissinger letter.]

Deposition taken, reduced to writing, and by the witness sworn and subscribed to before me, this 20th day of June, 1884.

FRED. M. OTT,
Examiner.

J. B. DRAPER.

Adjourned till June 21, 10, A. M.

June 21, 1884.

Examination resumed at 10, A. M.

Present Mr. Storrow and Mr. Howson for complainants, and Mr. Hill, Mr. Jacobs, and Mr. Church for respondents.

[*Respondents' counsel states that in addition to the objections which he made yesterday to the admissibility of the letter from Mr. Thomas Draper to Mr. J. J. Storrow, which was put in evidence by complainants' counsel last evening during the taking of John B. Draper's deposition on behalf of respondents, he further objects to its admissibility on the ground that being in the possession of complainants' counsel it should, if produced at all, have been produced during the taking of Mr. Thomas Draper's deposition at Dover, Delaware, in order that respondents' counsel might there have had an opportunity to examine Mr. Thomas Draper with reference to it or its contents.*

Complainants reply that they did not perceive anything in Mr. Draper's deposition that made it necessary to introduce the letter; that the deposition of Mr. John B. Draper stating one communication with complainants' counsel seemed to them to call for the other substantially contemporaneous communication upon the same subject.

Respondents' counsel states that of the four persons, to wit: Mr. Thomas Draper, Mr. Geo ge Kissinger, Mr. W. K. Fenn, and Mr. Melville Church, who were present together at the interview at the brick hotel at Easton, Md., on the second day of June, 1884, and who participated in the conversation that took place with Mr. George Kissinger there at that time, three, to wit: Mr. Draper, Mr. Kissinger, and Mr. Fenn, have since been examined with reference to said interview; Mr. Church being the only person who was

present and who has not been examined as a witness. Respondents' counsel, Mr. Hill, in view of the statements made by Mr. George W. Kissinger concerning that interview, and of the fact that his testimony on the subject is in direct contradiction of the testimony of Mr. Draper and Mr. Fenn upon the same subject, and in view of the importance of the matter thus controverted, feels it his duty to his client and to the Court to call the only remaining witness of the transaction, Mr. Church, to add his statement as to said interview.

MELVILLE CHURCH, *being produced, sworn, and examined, saith:*

Examined by Mr. Hill:

I am in my twenty-eighth year; I reside at Washington, D. C.; I am a lawyer.

Q. 1. You are one of respondents' counsel in this case, are you not?

A. I am.

Q. 2. You were present at an interview at the brick hotel, Easton, Md., on the second day of June, 1884, during which interview the letter "Exhibit Kissinger-Draper Letter, May 30, 1875," was shown to Mr. Kissinger and read by him, were you not?

A. I was.

Q. 3. Will you please state what Mr. Kissinger, at that interview, said about that letter or its contents or the matters referred to in the letter, adding any other particulars of the interview that will enable the Court to fully understand what took place there with reference to that letter, and how Mr. Kissinger came to make any statements that he did there make about it?

A. After Mr. Kissinger, Mr. Draper, Mr. Fenn and myself had entered the room in which the interview referred to took place, Mr. Draper said to Mr. Kissinger that he had brought some letters down there to show him, in order to see whether or not he could identify them. Mr. Draper then produced from his pocket several letters, including the letter of May 30, 1875. Two of the letters were shown Mr. Kissinger; one he read through, and said: "That's my letter;" the other he read part through, and said: "This is not my letter;" whereupon, Mr. Draper told him to go on and read it entirely through. Mr. Kissinger did so, and upon finishing it, said: "Yes, that's my letter." The letter about which he at first seemed doubtful was quite a long letter and dated in 1879; the other letter, about which he expressed no doubt, but acknowledged to be his upon seeing it, was dated in 1874, at Eberly's Mills.

When the two letters mentioned had been read and acknowledged by him to be his, he was handed the letter of May 30, 1875. As that was the letter we desired particularly to be acknowledged to be his, I was very attentive in observing his demeanor when it was shown him. It was not a long letter, but he was quite a while reading it; and I noticed that he was very much agitated while reading it, and that his hand holding the paper shook very much.

After he had finished with it Mr. Draper said: "George, is that your letter?" "Yes," he replied, "that's my letter; I remember it now." Then, after a pause, he turned to Mr. Draper and said to him: "You remember, Mr. Draper, we talked at one time of getting water from that upper spring." The remark about getting water from the upper spring was made faintly and with some hesitation. Mr. Draper replied to him: "We never talked about getting water from the upper spring at that time, George, though something was said about it at the time the stone house was built." That was all that was mentioned about getting water from the upper spring by either party during that interview or during any conversation that was had with Mr. Kissinger while we were at Easton. When Mr. Draper made the reply I have above given about getting water from the upper spring, Mr. Kissinger jumped up in a very excited manner and said, as near as I can recollect it, that he wished the devil had that ram; that he had been bothered nearly to death about it; Mr. Jacobs and Mr. Drawbaugh had been to see him; that he had told them all he knew about it; that the Bell Company had been to see him, and that he had told them all he knew about it, and that now we had come down there to try to get him to testify that that ram was put in in 1875; that he wouldn't do it; that he had sworn that ram was put in in 1878, and that it would be perjury for him to now swear that it was put in in 1875; that he wasn't going to testify any more about it for anybody; that if they wanted him any more they would have to come and take him. Then he went on protesting that he was such a friend of Drawbaugh's, but that Drawbaugh didn't give him anything but black looks, and wound up, I believe, by saying again that he wished the devil had the ram. He talked very loudly and excitedly. Mr. Draper told him that there was no use getting excited about the matter—to sit down; and tried to quiet him. Mr. Fenn and myself both told him that we didn't propose to call him as a witness about that ram; that we couldn't afford to put him on the stand for that purpose, in view of what he had testified. We told him that all we had come down there

for was to see whether or not the letters which we had shown him were his.

During this interview, Mr. Draper asked him if he didn't remember that when he (Draper) was up to see him in the spring of 1875 he had shown him how to trim the peach trees; and he replied: "Yes, I remember that." Mr. Draper further asked him if he didn't remember that during that same visit he (Kissinger) had shown him some saplings, and he (Draper) had asked him what they were for, and he had replied that he was going to make some pipe for the ram; and about him (Draper) then telling him that by the time he had bored those saplings out there wouldn't be anything but the sap left, and that he had better cut them up for fence-rails or something else; and, further, about his going the barn with him and showing him an auger, which he said he was to use for boring those pipes, and about him (Kissinger) telling him that the auger was out of fix. There was some other conversation between Mr. Draper, and Mr. Kissinger, and Mr. Fenn. Mr. Fenn and Mr. Draper had known him for years, and, in their conversation with him, called him "George." I had never seen him before that day. In conversation with him, however, I found myself calling him "George," as they did. It was getting dark, and Mr. Kissinger again got up and said he had to go. I said to him: "Wait a minute, George, I want to say a few words to you." He sat down with me at the table. I said to him: "George, in this letter of May 30, 1875, [holding it in my hand] you say, 'They tell me that only iron pipe will do to go up hill;' who did you mean had told you that?" He said: "I don't remember." Said I: "The other day I was down at Al. Seidel's forge, and saw a lot of old iron pipe lying there on the scrap-heap. Now, I know the Bell Company had Al. Seidel down to Philadelphia, but didn't put him on the stand, and it occurs to me that it may have been at Al. Seidel's forge that you intended getting the old iron referred to in your letter. Tell me, was it at Al. Seidel's, or where was it that you had seen the old iron pipe, so as to be able to say in your letter that you could get some?" He answered: "Well, I seen old pipe at various places—some at Seidel's, some at Fairview, and I got some pieces at Harrisburg." I then said to him: "What were the old iron pipes for, that you mention in this letter [pointing to it]? Were they for the ram, or something else?" And he replied: "They were for the ram." After a pause, I put another question. I said: "George, if the old pipe mentioned in this letter were for the ram, you must have had some talk about putting in the ram be-

fore you wrote the letter; isn't that so?" And he replied: "There was talk about putting in that ram ever since I went on the place; but that ram wasn't put in until 1878; I am positive of that." He then again said he must go, but I said to him: "I want you to acknowledge in writing those letters of yours." "Well," he says, "I don't think I ought to sign any papers unless both sides are present." I told him that I didn't wish to have him sign anything that mentioned the ram, but I merely wanted him to acknowledge in writing that the letters were his. I drew up to the table, pulled out a pocket memorandum-book that I carried, tore a page from it, and wrote out the acknowledgment which is in evidence, marked "Exhibit Kissinger Acknowledgment of Letters," and he sat down and I read it out to him; then he read it himself, and he signed it. I wrote the paper with a pencil, and he signed with a pencil, and Mr. Fenn and myself witnessed it. We all got up, and some one of us proposed going to supper. We pressed Mr. Kissinger to take supper with us, but he said he could not stop, as he had left his market-wagon down the street, and wanted to get it and go home. He left us, and I did not see him afterwards until he was produced on the stand. [After the preceding part of answer was read to the witness he continued as follows:] While the answer was being read to me, it came back to my mind that in replying to Mr. Kissinger's remark about the upper spring, Mr. Draper told him that the talk they had had on that subject was with reference to bringing down water to the barn-yard to water the stock. I have given in part the exact words of that interview as nearly as I can recollect them, and the substance of what was said at other times during that interview. There was some other conversation between Mr. Kissinger and Mr. Draper about how Mr. Kissinger came to write the letter of May 30, 1875, and about Mr. Draper having suggested the terra-cotta pipes, and afterwards finding out that they would not answer, substantially as stated in Mr. Draper's deposition, which I have read. There may have been other things said which at present escape my recollection.

[So much of the said answer as refers to Mr. Seidel and the Bell Company objected to as incompetent; and the inferences apparently intended to be suggested thereby objected to as incompetent and without any foundation.

Respondents' counsel states that, so far as the witness has referred to the matters mentioned in the above objection, he has evidently referred to them merely because they were a part of the conversation at the interview

at Easton, and it was necessary to mention them in giving a statement of what took place in that interview.]

Q. 4. In your last answer, you mentioned the fact that when Mr. Kissinger referred to the matter of some former talk about getting water from the upper spring, Mr. Draper remarked, in substance, among other things, that that talk had been about getting the water from the upper spring to the barn-yard, to water the stock; what, if any, reply did Mr. Kissinger make to that observation of Mr. Draper's?

[*Objected to because it assumes that to be a fact which has not yet been proved.*]

A. My recollection is that he made no reply. The fact that Mr. Kissinger referred so little to the subject of bringing water from the upper spring, I know, particularly impressed me at the time, and has many times since.

Q. 5. When, where, and by whom did you ever first hear any suggestion relating to the bringing the water down from the upper spring on the Draper farm near Marysville?

[*Objected to as immaterial and incompetent.*]

A. The first intimation that I ever had of the idea of bringing water from the upper spring on the Draper farm came through a conversation which I had with Mr. David Cowens, at his home near Marysville, after the complainants had closed their testimony in rejoinder at Philadelphia. I went up with Mr. W. K. Fenn to see Mr. Cowens for the purpose of questioning him more about his own pipes, which he said he had put in in 1874, and incidentally he mentioned the fact that there had been talk about getting water from that upper spring.

Q. 6. In Mr. George Kissinger's last deposition taken here on behalf of complainants, commencing on June 16, 1884, he was examined by the complainants in regard to the interview at Easton, at which Mr. Draper, Mr. Kissinger, Mr. Fenn, and yourself were present, as you have testified, and about the letters that were shown him there at that interview; and, in interrogatory 20, he was asked whether this letter of May 30, 1875, was among them, to which he replied: "Yes, sir." The next interrogatory, No. 21, which complainants' counsel put to him, was as follows:

"*Q.* 21. Did you tell these gentlemen, or any of them, at that visit, in substance, that the pipes referred to in this letter were for the ram?"

To which Mr. Kissinger replied: "No, sir." Is that testimony of Mr. Kissinger, in his answer 21, true or untrue?

[*Objected to on the ground that the subject of the witness' memory has been exhausted by the third answer, and the present question is an attempt by a leading question to vary or put a construction upon that answer, or else is immaterial and useless.*]

A. Untrue.

Q. 7. In the same deposition of Mr Kissinger he was cross-examined about that interview, beginning with cross-question 196; and among other things was asked the following question:

"*Cross-Q.* 204. At that interview between you, Mr. Fenn, Mr. Draper, and Mr. Church, at Easton, on the 2d of June, 1884, did Mr. Church inquire of you what the pipe referred to in the letter of May 30, 1875, were for?"

To which interrogatory he replied as follows: "I don't know whether Church himself asked me that or not, but some one asked me, and I said that them pipes were not concerning the ram at all; I said particularly that they weren't for the ram;" was that testimony of Mr. Kissinger's true or untrue?

[*Same objection.*]

A. Untrue; Mr. Kissinger made no such reply as that, either in form or substance.

Recess until 2.30, P. M.

Q. 8. I call your attention to the 206th, 207th, and 208th, 209th, and 210th cross-questions and answers in Mr. George Kissinger's last deposition in this case, and ask you to state whether those answers so made by Mr. Kissiner to the interrogatories propounded to him were severally true, or untrue.

[*Same objection.*

Witness reads the questions and answers referred to.]

A. They are all untrue.

Q. 9. I call your attention to the 213th cross-interrogatory of Mr. Kissinger's said deposition, in which interrogatory Mr. Kissinger was asked in substance to state what took place at Easton at the interview on June 2d, 1884, and to his answer to that interrogatory, but more particularly to that part of his said answer which is as follows:

"Well, when we got to Easton together in the hotel they commenced with me about some things that never happened. Draper said I had cut logs—now recollection—whether it was in the spring of 1875 or in the

spring of 1874—I can't recollect. Told Mr. Draper, says I, 'By God, you know that that ain't true;'" did or did not Mr. Kissinger make any remark, such as he there states, to Mr. Draper or any other person during that interview?

[*Same objection.*]

A. He did not.

Q. 10. I call your attention to his next statement, in the same answer —cross-answer 213, to wit: "Then he brought up the ram—said he had a contract that I was to put it in for $60; and I told Mr. Draper that he knowed better than that." Is that statement true, or not?

[*Same objection.*]

A. It is not.

Q. 11. Then, immediately following, in the same answer, he speaks of the letters as follows: "Then came the letters. I read the letters and said they were my handwriting; I said there was nothing in the letters concerning the ram. There was one letter, I said then, that mentioned pipe, but it wasn't concerning the ram. And I told him that the pipe of that letter was to bring the water down from the upper spring, and up the other hill as far as it would go." Is or is not this statement, which I have just quoted in the interrogatory, wholly true; and, if not, will you please state what part of it is true, and what part is not?

[*Same objection.*]

A. His statement in regard to reading the letters and saying they were in his handwriting is true. He did not say there was nothing in the letters concerning the ram, nor that the pipe mentioned in the letter didn't concern the ram; nor did he tell Mr. Draper or any one else that the "pipe of that letter was to bring the water down from the upper spring and up the other hill as far as it would go."

Q. 12. I call your attention to the 256th, 257th, and 258th cross-interrogatories and the answers thereto in Mr. Kissinger's said deposition, and ask you what, if anything, you remember of the subject there referred to being mentioned at the Easton interview.

[*Same objection.*]

A. I remember that that subject was mentioned by Mr. Draper to Mr. Kissinger, and Mr. Kissinger replied substantially as he states in his cross-answer 257.

Q. 13. In your third answer here this morning you testify, referring to a certain part of the interview at Easton, as follows: "I then said to

him, 'What were the old iron pipes for, that you mention in this letter? [pointing to it] Were they for the ram or something else?' and he replied, 'They were for the ram.'" What was his condition at the time when he made this answer to your question—was he calm or still laboring under excitement?

[*Objected to as above, and also because the language quoted from the answer should be read with its context.*]

A. We were quietly conversing near the table at the time he made that statement; our conversation was in an ordinary tone and deliberate. He appeared to be laboring under no excitement.

Q. 14. In your fifth answer in this deposition, you have referred to a conversation with Mr. David Cowens; please look at said answer, and state anything else that you may remember of that conversation, so far as it may have had relation to the subject, mentioned in your fifth answer, of getting water from the upper spring.

[*Objected to because no foundation has been laid for such a question in the deposition of Mr. Cowens taken this week, or elsewhere, and also because it calls for hearsay.*]

A. When the fifth question was put to me, my first impression was that the first that I had heard of there being an upper spring on the Draper farm was when Mr. Kissinger mentioned it at Easton, in the manner in which I have before referred in my deposition; but upon reflection I remembered that when I was up to see Mr. Cowens he had spoken of there being another spring on the Draper farm. I probably should have forgotten all about his reference to that other spring had it not been that Mr. Kissinger again spoke of there being another spring. So little impression did what Mr. Cowens said make upon my mind that, though afterwards I went on the Draper farm, I never hunted the other spring up, nor inquired about it, nor knew where it was, and neither the location of the spring nor anything about it was known to me or told to me until after my interview with Mr. Kissinger at Easton. After that interview I questioned Mr. Draper and Mr. Fenn about it, and when I went back to Marysville I took pains to hunt it up. The recollection afterwards of Cowens' mention of the spring would not permit me this morning, when questioned about it, to truthfully say that there had been no mention made to me of another spring on the Draper farm before I saw Mr. Kissinger.

[*Answer objected to as inferential and argumentative.*]

Q. 15. In your said 5th answer, you state that Mr. Cowens incident-

ally mentioned the fact that there had been talk about getting water from that upper spring; so far as you have any present recollection of what Mr. Cowens said at that time upon the subject, will you please state it?

[*Objected to for the reasons stated in the objection to the previous question, and because the witness' memory was exhausted by the previous question, and this asks for mere guess-work.*]

A. After I had questioned Mr. Cowens about his own pipes, and he had shown them to me, he told me that he had been down to Easton, and had been talking with Mr. Kissinger about the ram and the pipes on the Draper farm. I remember that he told me that Kissinger had said to him that he bored logs twice; that the first he bored he put down and plugged up. It was during our conversation about his visit to Kissinger and what Kissinger had said that there was mention made of this upper spring. My recollection is that it was not what he (Cowens) knew about the upper spring, but what had been talked by others. I am sure that he said nothing about bringing water from that upper spring to the house; for that I should most certainly have distinctly remembered, as I was at that time very much interested to know what means had been devised or talked of for getting water to that house, or near it.

Q. 16. If you know of anything else relating to the Easton interview, of any materiality or importance to be stated, to give the Court the truth, the whole truth, and nothing but the truth about that interview, will you please now state it?

A. The question put me, about what Mr. Kissinger had testified in regard to the conversation between him and Mr. Draper, having reference to their going into the woods, recalls to my mind the fact that Mr. Draper, when asking Mr. Kissinger about that matter, also asked him if he (Kissinger) didn't remember him (Mr. Draper) pointing to some crooked timber, and saying that he would like to have that timber down in Delaware for use in building a vessel.

I also now recollect that in the interview at Easton Mr. Kissinger, when asked by some of us what he remembered seeing at Drawbaugh's shop when he went over to Milltown with Mr. Cowens, that he (Kissinger) replied that he didn't remember seeing any telephones, but did remember putting something to his ear, he didn't know what it was.

I can at present think of nothing else save that Mr. Kissinger said that when he was over at Milltown with Mr. Cowens he went to Gilbert's and got seed potatoes; if anything else material was said, I cannot now recall it.

[*Answer objected to on the ground that no foundation had been laid for it. Whole deposition objected to as incompetent.*]

Cross-examination by Mr. Storrow, de bene esse:

Cross-Q. 17. Are the quotation marks in their proper places in your 3d answer?

A. Yes, sir; I have given, as near as I can recollect, the precise words that were used, at the places quoted. It is possible that I have made some slight mistakes, but I am sure that the form of the expressions, and the substance of them, was the same as I have given them.

Cross-Q. 18. You have stated in your testimony that during a part of the time Mr. Kissinger was excited, and during a part of the time he was calm and cool; will you, by referring to your third answer, point out, if you recollect, where the period of excitement ended and the period of calm began?

A. The period of excitement began while he was reading the letter of May 30, 1875. At that time he was not demonstrative in expression, save that he visibly trembled. After Mr. Draper told him that it was not at the time the letter had reference to, that he spoke about getting water from the upper spring, Mr. Kissinger jumped up; and then it was that he made his loud and rather abusive speech. Before I interrogated him about the use he intended to put the pipes mentioned in the letter to, he was in what I should term an ordinary condition of mind.

Cross-Q. 19. And remained so until the end of the interview, according to your recollection?

A. Yes, sir; he didn't seem to want to acknowledge in writing the letters, but there was no loud talk nor excited conduct about that part of the interview. When Mr. Draper told him, as I think all of us did, though I recollect Mr. Draper telling him particularly, that there was no harm in admitting in writing letters which he admitted verbally to be his, he sat down and signed the paper I had drawn up.

Cross-Q. 20. What day was it that you made this visit to Easton?

A. It was the 2d of June.

Cross-Q. 21. What day of the week?

A. It was Monday.

Cross-Q. 22. Where had you passed Sunday?

A. The greater part of it in Marysville, nursing a black eye I had received in a railroad accident.

Cross-Q. 23. Was Mr. Fenn with you at Marysville?

A. Yes, sir; he was also attending to his bruises.

Cross-Q. 24. When did you arrange with Mr. Draper that the party should meet at Easton?

A. I think it was May 29th.

Cross.-Q. 25. What time did you reach Easton?

A. We reached Easton in the afternoon of the 2d of June, at between three and four o'clock. The train was behind time; it was freight train with one passenger car attached.

Cross-Q. 26. Was it the morning train from Philadelphia?

A. Mr. Fenn and I took the eight o'clock, A. M., train at Philadelphia, and arrived at Clayton, Delaware, somewhere in the neighborhood of eleven o'clock. We changed cars there for Easton; at least we got out of the train, got a little lunch, and then took this last car attached to a freight train.

Cross-Q. 27. When did you leave Easton?

A. We left Easton the evening of the 2d of June.

Cross-Q. 28. How did you leave, and where did you go to?

A. At the hotel we got into an omnibus and were driven down to the boat, which we took for Baltimore; that is to say, Mr. Fenn and myself went that way leaving Mr. Draper behind to return to Dover next day by rail.

Cross-Q. 29. Did Mr. Draper go down from Philadelphia with you on Monday?

A. He did not; he met us at Clayton. We didn't know he was going over to Easton with us till he got into our car; we had expected to meet him at Easton.

Cross-Q. 30. Why did you go to Easton?

A. We went there to see if Mr. Kissinger would acknowledge the letters to be his.

Cross-Q. 31. I suppose you mean to answer my question broadly, and mean that that was the only reason, do you?

A. Yes, sir; that was the only reason.

Examination taken, reduced to writing, and by the witness sworn and subscribed to before me this 21st day of June, 1884.

FRED. M. OTT,
Examiner.

MELVILLE CHURCH.

JUNE 21, 1884, 9 o'clock, P. M.

Present, Mr. Storrow and Mr. Howson, for complainants, and Mr. Hill, Mr. Jacobs, and Mr. Church, for respondents.

[*Counsel for respondents announce that their evidence is now closed.*]

I hereby certify that the foregoing depositions of witnesses on behalf of respondents were begun at Harrisburg, Penna., on the 20th day of June, and concluded on the 21st day of June, 1884, as set forth in the foregoing record; and that the witnesses severally made oath or affirmation and subscribed to their depositions in my presence, as set forth, and that the papers put in evidence in said depositions remain in my custody.

Witness my hand, this 21st day of June, 1884.

FRED. M. OTT,
Examiner.